

FILED

FEB 1 2017

Docketed by



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Petitioner,

vs.

DOAH Case No. 16-2425
DFS Case No. 15-264-1A-WC

MS DOCKSIDE MARINA, LLC,

Respondent.

FINAL ORDER

THIS CAUSE came for consideration and final agency action on the Recommended Order issued on November 3, 2016.

Respondent filed numerous exceptions to the Recommended Order, all of which must be rejected. Respondent's exceptions to the ALJ's findings of fact must be rejected because respondent fails to allege that the findings are not supported by competent substantial evidence. § 120.57(1)(l), Fla. Stat. Rather, respondent merely highlights record evidence that respondent believes contradicts the ALJ's findings. It is the ALJ's prerogative to weigh the evidence, to judge the credibility of the witnesses, and to make findings of fact, which may be rejected only when there exists no competent substantial evidence to substantiate the findings. *See Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277 (Fla. 1st DCA 1985).

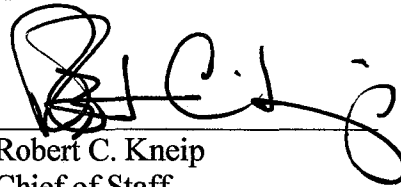
Respondent's exceptions to the ALJ's conclusions of law and recommendation essentially attempt to use the alternative factual findings to modify the conclusions and recommendation. Because respondent failed to allege the ALJ's factual findings were not based on competent substantial evidence, respondent has failed to demonstrate that its substituted conclusions of law are more reasonable than the ALJ's. Indeed, the ALJ's conclusion that respondent's employees are not covered under the federal Longshore and Harbor Workers' Compensation Act is correct. Respondent's exceptions to the contrary are rejected.

After reviewing the record, including admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the recommended order is hereby fully adopted.

Accordingly, a \$33,040.00 penalty is imposed against MS Dockside Marina, LLC, for its failure to secure workers' compensation coverage. Respondent must remit payment of the penalty to the Department or execute a payment agreement with the Department to pay the penalty by installments.

DONE and ORDERED this 1st day of February, 2017.




Robert C. Kneip
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

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