

FILED

JUL 27 2018

Chief Financial Officer
Docketed by: *J. Johnson*



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Petitioner,

v.

ELITE RESTORATION AND CONSTRUCTION, LLC,

Respondent.

DOAH CASE NO.: 17-3814
DFS CASE NO.: 16-396-D1-WC

FINAL ORDER

THIS CAUSE came on for consideration of and for final agency action on a Recommended Order ("RO").

After reviewing the record, including all testimony and admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the Recommended Order is hereby adopted, except as modified below.

The first sentence of the second paragraph of the RO's Preliminary Statement is modified to replace "July 7, 2017" with "July 5, 2017".

The first sentence of the third paragraph of the RO's Preliminary Statement is modified to replace "served" with "issued".

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Findings of Fact paragraph 3 is modified by replacing “Respondent’s sole shareholder, owning 100% of the stock.” with “Respondent’s interest holder, owning 100% of the interest.”¹

Conclusions of Law paragraph 39 is modified to replace the case citation with the following: “See §§ 440.10(1)(a), .38(1), and .107(1), Fla Stat.” This conclusion is as or more reasonable than the conclusion it replaces.²

Accordingly, Elite Restoration and Construction, LLC, is assessed a penalty of \$16,671.14. Within 30 days from the date of this Final Order, Respondent must pay the penalty in full, less any payments made to date, or execute a payment agreement with the Department of Financial Services to pay the penalty by installments.

DONE and ORDERED this 27 day of July, 2018.




Ryan West
Chief of Staff

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¹ The RO’s finding is not supported by competent substantial evidence. Respondent is not a corporation; it is a limited liability company, a distinct type of business entity. See § 605.0102(31)(f), Fla. Stat. (“Interest holder” means: A member of a limited liability company.”).

² The case cited in the RO, C & L Trucking v. Corbitt, 546 So. 2d 1185 (Fla. 5th DCA 1989) (“C&L”), does not provide support for the conclusion because the case does not address the duties of an employer under chapter 440, Florida Statutes. Rather, C&L’s focus is on section 440.39(3)(a), Florida Statutes, vesting workers’ compensation insurers with a statutory right of subrogation. The case addresses whether the insurer properly perfected its subrogation lien. The subrogor premised her defense on the insurer’s failure to “strictly comply” with the notice requirement set forth in section 440.39(3)(a), Florida Statutes. The court rejected the defense and upheld the insurer’s subrogation claim.

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.

Copies furnished to:

Elite Restoration and Construction, LLC
c/o Brian Johnson, Owner
7185 West Village Drive
Homosassa, Florida 34446

Dustin Metz
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333



CHIEF FINANCIAL OFFICER
STATE OF FLORIDA
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, FL 32399-4229

Return Service Requested

Elite Restoration and Construction, LLC
c/o Brian Johnson, Owner
7185 West Village Drive
Homosassa, Florida 34446



MAILED

7.27.18

Brian Johnson