

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Petitioner,

vs.

Case No. 18-0619

GRANDVIEW GARDENS BED AND
BREAKFAST, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on June 25, 2018, by video teleconference at sites in West Palm Beach and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in sections 120.569 and 120.57(1), Florida Statutes.

APPEARANCES

For Petitioner: Tabitha G. Harnage, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Heinrich Rose, pro se
Grandview Gardens Bed and Breakfast, Inc.
1608 Lake Avenue
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

The issue is whether Petitioner properly issued a Stop-Work Order and Amended Order of Penalty Assessment against Respondent for failing to obtain workers' compensation insurance that meets the requirements of chapter 440, Florida Statutes.

PRELIMINARY STATEMENT

On August 21, 2017, the Department of Financial Services, Division of Workers' Compensation ("Division" or "Petitioner"), issued and served a Stop-Work Order and Order of Penalty Assessment on Grandview Gardens Bed and Breakfast, Inc.

("Grandview" or "Respondent"), alleging that Respondent was not in compliance with the coverage requirements of chapter 440. An Amended Order of Penalty Assessment was issued on November 27, 2017.

On or about December 18, 2017, Respondent challenged the Stop-Work Order and Amended Order of Penalty Assessment and requested a formal hearing on the matter by petition. The petition was transferred to the Division of Administrative Hearings on February 7, 2018, for assignment of an Administrative Law Judge to conduct the hearing.

At hearing, Respondent presented the testimony of four witnesses: Heinrich Rose; Peter Emmerich; Jay Montgomery; and Jan Weimer. Respondent's Exhibits 1 through 6 were admitted into evidence. The Division presented the testimony of two witnesses:

Jose Lopez, former compliance investigator and current District II Workers' Compensation Administrator; and Eunika Jackson, penalty auditor. Petitioner's Exhibits 1 through 13 were received into evidence.

The proceedings were transcribed, and the parties availed themselves of the right to submit proposed recommended orders. The one-volume Transcript of the final hearing was filed with the Division of Administrative Hearings on August 23, 2018. Petitioner and Respondent timely filed proposed recommended orders by the deadline, which have been considered in the preparation of this Recommended Order.

The parties stipulated to facts in the joint pre-hearing stipulation, and the relevant facts stipulated therein are accepted and made part of the Findings of Fact below. Unless otherwise noted, all statutory references are to the Florida Statutes (2017).

FINDINGS OF FACT

1. The Division is a component of the Department of Financial Services. It is responsible for enforcing the workers' compensation coverage requirements pursuant to section 440.107.

2. At all times relevant to this proceeding, Grandview was a corporation registered to do business in Florida.

3. Grandview is a bread and breakfast and was an active company during the two-year audit period from August 22, 2015, through August 21, 2017.

4. On July 19, 2017,^{1/} Respondent met with a Henderson Insurance agent and learned that Respondent was not in compliance with the workers' compensation requirements. Grandview immediately requested bids to obtain insurance, but did not purchase a policy because it was decided that it was "not the right time."

5. On August 21, 2017, Robert Feehrer ("investigator" or "Feehrer"), compliance investigator for the Division, started an investigation of Grandview. Feehrer discovered that Grandview did not have any workers' compensation policies, employee leasing agreements, or exemptions on file with the National Council on Compensation Insurance.

6. That same day the Division issued Grandview a Stop-Work Order for Respondent's failure to secure the required workers' compensation insurance coverage.

7. Petitioner also served Grandview with a Request for Production of Business Records for Penalty Assessment Calculation ("Request") asking for documentation to enable the Division to evaluate the payroll for the audit period of August 22, 2015, through August 21, 2017, and to determine Respondent's compliance with the Workers' Compensation Law of Florida.

8. Grandview responded timely and provided sufficient business records in response to the Division's Request.

9. Eunika Jackson ("auditor" or "Jackson"), penalty auditor for the Division, was assigned to Grandview's investigation. Jackson reviewed the business records produced by Grandview.

10. Jackson concluded her audit by properly calculating the workers' compensation amount owed by Grandview for the audit period using the Class Code 9052 for lodging facilities. Jackson applied the approved manual rates and methodology specified in section 440.107(7)(d).

11. Grandview had at least four employees^{2/} during the audit period and did not have any exemptions from workers' compensation insurance coverage requirements during the audit period.

12. Initially, Jackson calculated Grandview's penalty amount as being over \$25,000.00.

13. After Grandview timely provided sufficient business records in response to the Request, Jackson correctly applied the penalty reduction credit to the calculation and concluded Grandview owed a reduced penalty amount of \$13,755.55.

14. On November 27, 2017, Respondent was served with the Amended Order of Penalty Assessment totaling \$13,755.55.

15. On December 18, 2017, Respondent challenged the penalty assessment and requested a formal hearing.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to section 120.569 and 120.57(1), Florida Statutes (2018).

17. Chapter 440 is known as the Workers' Compensation Law. Section 440.38(1) mandates that employers secure payment of workers' compensation for their employees.

18. "Employer" is defined, in part, as "every person carrying on any employment." § 440.02(16)(a), Fla. Stat. "If the employer is a corporation, parties in actual control of the corporation, including, but not limited to the president, officers who exercise broad corporate powers who . . . directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107." § 440.02(16)(a), Fla. Stat.

19. "Employee" is defined, in part, as "any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written." § 440.02(15)(a), Fla. Stat.

20. Because an administrative fine deprives the person fined of substantial rights in property, such fines are punitive in nature. Petitioner has the burden of proof and must establish

through clear and convincing evidence that Respondent violated the workers' compensation law. Dep't of Banking & Fin., Div. of Sec. and Investor Prot. v. Osborne Stern, Inc., 670 So. 2d 932 (Fla. 1996).

21. It is unfortunate that Respondent did not obtain workers' compensation after soliciting a quote for insurance in July 2017. However, Florida law does not provide any exceptions for unknowingly going into non-compliance as Respondent contends in its proposed recommended order.

22. Instead, the greater weight of the evidence demonstrates that Respondent employed at least four employees and that Respondent was engaged in the lodging industry in Florida during the audit period of August 22, 2015, through August 21, 2017. Additionally, the record shows Respondent failed to carry workers' compensation insurance for its employees as required by Florida's Workers' Compensation Law for the audit period. Therefore, Petitioner met its burden in this matter and the record is clear that Respondent owes a total penalty amount of \$13,755.55 for failing to secure the payment of workers' compensation insurance for its employees in violation of chapter 440.

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation, issue a final order affirming the Stop-Work Order and Amended Order of Penalty Assessment in the amount of \$13,755.55.

DONE AND ENTERED this 30th day of October, 2018, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of October, 2018.

ENDNOTES

^{1/} Petitioner's Exhibit 10, Item F, is the Henderson Insurance letter documenting the date of the meeting.

^{2/} The undersigned is not persuaded by Respondent's position that it never employed more than three individuals during the audit period because the exhibits support that Grandview was out of compliance, and Respondent admitted at hearing that Grandview was not in compliance.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.