

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL  
SERVICES, DIVISION OF WORKERS'  
COMPENSATION,

Petitioner,

vs.

Case No. 18-1804

HORACE BRADLEY SHEFFIELD  
BUILDERS, LLC,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on June 12, 2018, in Tallahassee, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Jonathan Anthony Martin, Esquire  
Florida Department of Financial Services  
Legal Services Division  
200 East Gaines Street  
Tallahassee, Florida 32399

For Respondent: Horace B. Sheffield  
Horace B. Sheffield Builders, LLC  
4564 Ambervalley Drive  
Tallahassee, Florida 32312

STATEMENT OF THE ISSUES

The issue is whether Horace Bradley Sheffield Builders, LLC ("Sheffield Builders"), had insufficient workers' compensation insurance during the time period in question; and, if so, the amount of the resulting penalty.

PRELIMINARY STATEMENT

On October 12, 2017, the Department of Financial Services, Division of Workers' Compensation ("the Department"), served an Amended Order of Penalty Assessment requiring Sheffield Builders to pay a penalty of \$11,082.56 for having an insufficient amount of workers' compensation insurance.

Sheffield Builders responded by filing a Petition for Administrative Hearing setting forth its position as follows:

c. [Sheffield Builders] received a copy of Site Specific Stop-Work Order #17-181-1A on April 21, 2017, by hand delivery by investigator Lewis Johnson.

d. Stop-Work Order was issued for hiring a subcontractor without demanding or receiving proof of Worker's Compensation coverage. [Horace Bradley Sheffield] hired his son, Horace Bradley Sheffield III (Bradley's Quality Framing and Trim, LLC) to build a fence on a lot [Horace Bradley Sheffield] owned at 7111 Summit Ridge Drive, Tallahassee, FL 32312.

e. Horace Bradley Sheffield III (Bradley Quality Framing and Trim, LLC) is [an] independent contractor and doesn't work exclusively for [Sheffield Builders] owned by his father. He told his father the day prior [to] the inspection that his WC

coverage [was] still in effect. [Horace Bradley Sheffield]'s failure is that he did not ask for proof of his son's WC coverage and believed what he was told.

f. [Horace Bradley Sheffield] doesn't believe that trusting in a person and taking a word from a dear loved son generates worker's compensation fraud. [Horace Bradley Sheffield] had nothing to gain by hiring Horace Bradley Sheffield III (Bradley's Quality Framing and Trim, LLC) and [if he had] had knowledge of [the lapse in coverage] would have gladly paid or loaned \$55.00 for renewal.

g. [Sheffield Builders] requests relief from this issued Stop-Work Order #17-181-1A for the following reasons:

- [Sheffield Builders] had no intent to commit the crime of Worker's Compensation Fraud, Failure to Secure Coverage Section 440.105(4)(a)3, Florida Statutes.

- [Horace Bradley Sheffield] was issued a \$1000.00 (one thousand dollars) Stop-Work Order fine for his failure to demand proof of coverage from all subcontractors, including his son.

- Sheffield III (Bradley's Quality Framing and Trim, LLC) renewed WC coverage immediately after he discovered it was out of date and affected [Horace Bradley Sheffield], his father.

On April 6, 2018, the Department referred the instant case to DOAH for a formal administrative hearing.

Via a Notice of Hearing issued on April 10, 2018, the undersigned scheduled a final hearing for June 12, 2018.

The final hearing was convened as scheduled on June 12, 2017. At the outset of the final hearing, the undersigned granted the Department's Agreed Motion for Leave to Amend Order of Penalty Assessment, and the Department announced that the new proposed penalty was \$7,801.92.

The Department presented the testimony of Eunika Jackson and Lewis Johnson. The Department offered Exhibits 1 through 14, and all of the aforementioned exhibits were accepted into evidence. During the final hearing, the undersigned granted leave for the Department to file an additional exhibit, and it did so on June 14, 2018. That additional exhibit is designated as the Department's Exhibit 15.

Horace Bradley Sheffield testified on his own behalf and offered no exhibits.

The Transcript was filed with DOAH on June 26, 2018.

The Department filed a timely Proposed Recommended Order on July 6, 2018, that has been considered by the undersigned in the preparation of this Recommended Order.

Sheffield Builders filed an untimely Proposed Recommended Order on July 12, 2018. Because Sheffield Builders had been proceeding pro se, the undersigned elected to consider Sheffield Builders' Proposed Recommended Order during the preparation of this Recommended Order.

## FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following Findings of Fact are made:

1. The Department is the state agency responsible for enforcing the requirement in chapter 440, Florida Statutes (2016),<sup>1/</sup> that employers in Florida secure workers' compensation coverage for their employees.

2. While an exemption can be obtained for up to three corporate officers, any employer in the construction industry with at least one employee must have workers' compensation coverage. § 440.02(15), Fla. Stat.

3. The Department fulfills its enforcement duty by conducting compliance investigations, and a compliance investigation can begin with a Department investigator visiting a worksite.

4. Lewis Johnson is employed in Tallahassee, Florida, as a compliance investigator for the Department.

5. Mr. Johnson monitors construction and non-construction entities to ensure that they have obtained workers' compensation coverage.

6. On April 20, 2017, Mr. Johnson was conducting routine checks in the Killearn Lakes area of Tallahassee. He had just

visited three worksites and found that the construction firms working those sites had workers' compensation coverage.

7. Mr. Johnson then drove past a site where a fence was being built:

As I saw the fence being built, I stopped momentarily. I took a picture to document the work activity. I then got out and I made contact with the two workers. The first worker identified himself as Horace Bradley Sheffield [III], he advised that he was the subcontractor, owned his own business, Bradley's Quality Framing and Trim, LLC. He had another gentleman there with him, that gentleman was initially very quiet.

I asked Sheffield III whom he worked for, he told me that he was employed by his dad. I asked him who his dad was, he said that his dad was Horace Bradley Sheffield, and that his dad owned Horace Bradley Sheffield Builders, LLC, and that he was the general contractor for the home that was under construction, and that he was working directly for his dad.

I then spoke briefly with the gentleman that was with Horace Bradley III regarding his employment. Initially during my conversation with Horace Bradley III, he said that he was trying out this worker. He said that he'd only - he'd been on the job for two days himself, but this was this guy's first day, and he was just trying him out. So in my conversation with the employee who was identified as Colter Gilmore, Colter said "No, I'm being paid \$10 dollars an hour," and so I documented that information.

8. After the conversation with Mr. Sheffield III, Mr. Johnson looked for any records pertaining to Quality Framing

and Trim, LLC, within the Coverage and Compliance Automated System ("CCAS") and the Division of Corporations.

9. CCAS is a database maintained by the Department, and it enables Department investigators, such as Mr. Johnson, to ascertain if any construction company operating in Florida has workers' compensation coverage.

10. CCAS indicated that Quality Framing and Trim, LLC, had been dissolved and had no workers' compensation coverage. CCAS also revealed that Mr. Sheffield III's exemption had expired on July 10, 2015.

11. After reporting to his supervisor that Mr. Sheffield was paying his son as a subcontractor, Mr. Johnson received authorization to issue a Stop-Work Order to Mr. Sheffield III on April 20, 2017.

12. After issuing the Stop-Work Order, Mr. Johnson testified that he:

placed a call to Mr. Horace Bradley Sheffield, the owner of Horace Bradley Sheffield Builders, LLC, Bradley's dad, and I made him aware of the fact that I had just issued his son a Stop-Work Order for violation of Florida Statute 440; did not have proof of compliance. And then we spoke on the phone regarding that, and he expressed that he did not know, he did not - he was unaware that his son's workers' comp exemption had expired. What he said that was most interesting was that he did hire his son as a subcontractor; that he was paying his son directly. I asked him how much, he was paying his son approximately

\$4.50 a square foot to build a fence, and so that was the remuneration between son and father for the build.

And so I then expressed to him that, because of that violation, his son being in violation of Florida Statute 440, that he himself was also in violation because, as a general contractor, it is Mr. Sheffield's job to demand and require the proof of workers' compensation coverage from any employer to include a subcontractor.

Q: And did Mr. Sheffield do that in this case?

A: No, sir, he did not. He sort of indicated that he just failed to do so.

13. Mr. Johnson learned through CCAS that Sheffield Builders had no workers' compensation policy but that Mr. Sheffield had an exemption for himself.

14. After conferring with his supervisor regarding Mr. Sheffield's lack of workers' compensation coverage for those working for Sheffield Builders, Mr. Johnson served a Stop-Work Order and an Order of Penalty Assessment on Mr. Sheffield via hand-delivery on April 21, 2017.

15. The Stop-Work Order required Sheffield Builders to cease all business operations at the Killlearn Lakes worksite and was to remain in effect until lifted by the Department.

16. The Order of Penalty Assessment notified Sheffield Builders that it was required to pay an amount:

[e]qual to 2 times the amount the employer would have paid in premium when

applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation within the preceding 2-year period. Employers who have not been previously issued a Stop-Work Order may receive a credit for the initial payment of the estimated annual workers' compensation policy premium [for] the dollar or percentage amount attributable to the initial payment of the estimated workers' compensation expense to a licensed employee leasing contract. In all cases a minimum penalty of \$1,000 is assessed against the employer. Section 440.107(7)(d), F.S.

17. Mr. Johnson also served on April 21, 2017, a "Request for Production of Business Records for Penalty Assessment Calculation" ("the Request for Production").

18. Through the Request for Production, the Department sought various types of financial documents pertaining to Sheffield Builders' payroll during the period between December 10, 2015, and April 20, 2017 ("the noncompliance period"), so that it could calculate the penalty to be imposed on Sheffield Builders.

19. The business records requested by the Department consisted of payroll documents such as time sheets, check stubs, earnings records, and federal income tax documents; account documents such as all business check journals and statements, including cleared checks for all open and closed business accounts; check and cash disbursements; proof of any workers'

compensation insurance or exemptions; and subcontractor information.

20. The Request for Production required Sheffield Builders to provide the aforementioned records within 10 business days of receiving the Request for Production.

21. Mr. Sheffield provided business records, and the Department used those records to reduce the proposed penalty to \$7,801.92.

22. Eunika Jackson, a penalty auditor employed by the Department, calculated the aforementioned penalty based on the business records provided by Mr. Sheffield.

23. For each person for whom Sheffield Builders failed to obtain workers' compensation coverage during the noncompliance period, Ms. Jackson determined how much money Sheffield Builders paid each person during that period.

24. Sheffield Builders paid \$32,477.00 to Mr. Sheffield, III; \$1,578.00 to Risocani Alfredo; \$16,861.50 to Roland Hedrington; and \$100.00 to Adam Chew during the noncompliance period.

25. The gross payroll amount for each person was divided by 100 in order to create a percentage, and the percentage associated with each person was then multiplied by an "approved manual rate."

26. An approved manual rate is associated with a particular class code.

27. A class code describes an employee's scope of work based on the type of work he or she performs on a daily basis.

28. The National Council on Compensation Insurance publishes the Scopes Manual, and the Scopes Manual sets forth class codes for numerous types of work.

29. Multiplying the gross payroll percentage by an approved manual rate results in a workers' compensation insurance premium for a particular employee.

30. As required by section 440.107(7)(d)1., Florida Statutes, each premium amount is multiplied by two in order to calculate a penalty associated with each employee for whom workers' compensation insurance was not obtained.

31. Ms. Jackson then added the individual penalties associated with Horace Sheffield III, Risocani Alfredo, Roland Hedrington, and Adam Chew in order to calculate the total penalty of \$7,801.92.

32. With regard to Mr. Sheffield III, Mr. Sheffield acknowledged at the final hearing that his son did not have workers' compensation coverage during the time period in question. Mr. Sheffield testified that his son had attempted to renew his exemption on-line but failed to realize that his attempt had been unsuccessful.

33. Mr. Sheffield testified that Roland Hedrington had workers' compensation through his employer, Professional Electrical Systems. Also, Mr. Sheffield supplied the Department with the workers' compensation policy that Mr. Hedrington provided to him.

34. Ms. Jackson testified as to why she included the compensation paid to Mr. Hedrington in the penalty calculation:

Q: And so Roland Hedrington, why did you put that individual down on the penalty?

A: He's on there because the check images that I reviewed had his name written on the check images. [Mr. Sheffield] came back and gave us a certificate of insurance for Professional Electrical Services - or Systems, I did review that document. In addition to that, I went in to CCAS to determine whether or not if Mr. Roland had a workers' comp exemption, because per statute and rule, we cannot exempt the payments to an individual if they do not have a workers' comp exemption, even though the company that they work for may have a workers' comp policy.

So in my review of CCAS, it was determined that Professional Electrical did have a valid workers' comp policy, but on the exemption tab, there was only one individual who had an exemption, and it wasn't Mr. Roland. So therefore, the payments issued to Mr. Roland [are] considered uninsured, because the payment was issued to that individual and not the entity.

Q: Is Roland listed as an owner of the company?

A: He wasn't. When I did my research in Sunbiz, I didn't find his name on the employer's detail.

Q: And so from the records, Roland is simply an employee of Professional Electrical Systems, correct?

A: Yes.

Q: And so the payment that went from [Sheffield Builders] in this case to Roland did not go through the - that transaction was not pursuant [to] a worker's compensation policy of Professional Systems, correct?

A: Correct.

Q: Okay.

ALJ: So let me make sure I understand. So the check in question - or the payment in question to Mr. Roland Hedrington, he works for some sort of LLC, but the check was made payable to him as an individual?

A: Correct.

ALJ: All right. And the LLC had [a] workers' compensation exemption?

A: Coverage and an exemption, yes.

ALJ: Okay. But the coverage did not apply to Mr. Hedrington?

A: It wouldn't apply because the payment was a direct payment to Mr. Hedrington, and not the payment to Professional Electrical. So if the payment was to Professional Electrical, then it's indicating that Professional Electrical did the services, and whoever that employer is, in turn, would pay his employees, so the payments are covered.

But because the payment document had Roland's name on it, it's indicating it's a direct transaction between a subcontractor and a general contractor, not the actual entity that he works for.

ALJ: So let me ask a question. So because a check was written to this individual, Mr. Roland Hedrington, I guess in theory he could have been working on his own accord, and that - and he doesn't have workers' comp as an individual, so that's why you put him in the penalty calculation.

A: Correct.

ALJ: Okay. But if the check had been written payable to the LLC that had coverage, then it would not have gone to the calculation?

A: Correct.

35. There is no dispute regarding the mechanics behind the Department's calculation of the penalty. The only dispute concerns the Department's inclusion of the funds paid to Mr. Sheffield III, and Mr. Hedrington in the penalty calculation.

36. The Department has proven by clear and convincing evidence that the payments from Sheffield Builders to Horace Sheffield III, Risocani Alfredo, and Adam Chew were not covered by workers' compensation coverage and that Sheffield Builders should be fined \$6,031.46.

37. The Department has not proven by clear and convincing evidence that Roland Hedrington was not working under the

auspices of Professional Electrical Systems when Mr. Hedrington performed work for Sheffield Builders during the noncompliance period. As a result, the payment to Mr. Hedrington should not be included in the Department's penalty calculation.

#### CONCLUSIONS OF LAW

38. DOAH has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

39. Chapter 440 is known as the "Workers' Compensation Law." § 440.01, Fla. Stat.

40. Every employer is required to secure the payment of workers' compensation for the benefit of its employees, unless the employee is exempted or excluded under chapter 440. See Bend v. Shamrock Servs., 59 So. 3d 153, 157 (Fla. 1st DCA 2011). Indeed, the Legislature has declared that "the failure of an employer to comply with the workers' compensation coverage requirements under [chapter 440] poses an immediate danger to public health, safety, and welfare." § 440.107(1), Fla. Stat.

41. Accordingly, section 440.107(7)(a) states, in relevant part:

Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter . . . , such failure shall be deemed

an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours.

42. The Department is required to assess against any employer that has failed to secure the payment of workers' compensation "a penalty equal to" the greater of \$1,000 or "2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation . . . within the preceding 2-year period."

(emphasis added). § 440.107(7)(d)1., Fla. Stat. This is a penal statute that, if ambiguous, must be construed against the Department. See Lester v. Dep't of Prof'l & Occ. Reg., 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

43. Because the Department seeks to impose an administrative penalty or fine against Sheffield Builders, the Department has the burden of proving the material allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996). Clear and convincing evidence must make the facts "highly probable" and produce in the mind of the trier of fact "a firm belief or conviction as to the truth of the facts sought to be

established," leaving "no substantial doubt." Slomowitz v. Walker, 429 So. 2d 797, 799 (Fla. 4th DCA 1983).

44. In order to meet its burden in the instant case, the Department must demonstrate that: (a) Sheffield Builders was required to comply with the Workers' Compensation Law; (b) that Sheffield Builders failed to comply with the requirements of the Workers' Compensation Law; and (c) the penalty assessed by the Department is appropriate.

45. There has been no dispute that Sheffield Builders was required to comply with the Workers' Compensation Law and that Sheffield Builders failed to do so with regard to Risocani Alfredo and Adam Chew. There is also no dispute that the Department correctly calculated the portions of the \$7,801.92 fine attributable to the payments made to Mr. Alfredo and Mr. Chew.

46. Mr. Sheffield acknowledged during the final hearing that Horace Sheffield III, had allowed his coverage to lapse. Therefore, the Department correctly included the payments to Mr. Sheffield III, in the penalty calculation. See § 440.10(1)(b), Fla. Stat. (providing that "[i]n case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the

same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment."); Fla. Admin. Code Rule 69L-6.032(6) (providing that "[i]f a contractor fails to obtain evidence of workers' compensation insurance or evidence of a valid Certificate of Election to Be Exempt as required herein and the subcontractor has failed to secure the payment of compensation pursuant to chapter 440, F.S., the contractor shall be liable for, and shall secure the payment of compensation for all the employees of the subcontractor pursuant to section 440.10(1)(b), F.S., and if the contractor has failed to secure the payment of compensation pursuant to chapter 440, F.S., the contractor will be issued a Stop-Work Order and a penalty will be assessed against the contractor pursuant to section 440.107(7)(d)1., F.S. For penalty calculation purposes, the payroll for the contractor shall also include the payroll of all uninsured subcontractors and their employees.").

47. The Department takes the position that the payment to Roland Hedrington should be included in the penalty calculation because the check from Sheffield Builders was made payable to Mr. Hedrington rather than Professional Electrical Systems. The Department makes this argument despite the testimony from

Ms. Jackson indicating that Professional Electrical Systems had a workers' compensation policy in effect.

48. The fact that a check from Sheffield Builders was made payable to Mr. Hedrington rather than to Professional Electrical Systems does not amount to clear and convincing evidence that Mr. Hedrington was not working under the auspices of Professional Electrical Systems<sup>2/</sup> when he worked for Sheffield Builders during the time period in question<sup>3/</sup>.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation, enter a final order imposing a penalty of \$6,031.46 on Sheffield Builders, LLC.

DONE AND ENTERED this 27th day of July, 2018, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of July, 2018.

## ENDNOTES

<sup>1/</sup> Unless stated otherwise, all statutory citations will be to the 2016 version of the Florida Statutes.

<sup>2/</sup> Mr. Sheffield was under the impression during the final hearing that Mr. Hedrington was the owner of Professional Electrical Systems. However, the Department's Exhibit 15 demonstrates that Mr. Hedrington is not the owner. Nevertheless, that does not demonstrate that Mr. Hedrington was not working under the auspices of Professional Electrical Systems when he performed work for Sheffield Builders.

<sup>3/</sup> The Department's "coverage vs. compliance" argument has not been overlooked. The Department asserted during the final hearing and in its Proposed Recommended Order that an injured employee of a subcontractor would be covered by workers' compensation insurance if the subcontractor had coverage but the general contractor did not. The Department asserts that a compliance issue arises if a general contractor such as Sheffield Builders makes a check payable directly to an employee of a subcontractor such as Professional Electrical Systems because Sheffield Construction's "payment to Mr. Hedrington was not run through Professional Electrical's workers' compensation coverage and no premium was taken out before Mr. Hedrington cashed the check." However, any problems associated with monitoring compliance with workers' compensation requirements do not override the fact that the Department must prove its case by clear and convincing evidence.

### COPIES FURNISHED:

Jonathan Anthony Martin, Esquire  
Florida Department of Financial Services  
Legal Services Division  
200 East Gaines Street  
Tallahassee, Florida 32399  
(eServed)

Horace B. Sheffield  
Horace B. Sheffield Builders, LLC  
4564 Ambervalley Drive  
Tallahassee, Florida 32312

Julie Jones, CP, FRP, Agency Clerk  
Division of Legal Services  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0390  
(eServed)

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.