

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Petitioner,

vs.

Case No. 18-4144

L AND M AIRCONDITIONING SYSTEM,
INC.,

Respondent.

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RECOMMENDED ORDER

On October 17, 2018, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Tabitha G. Harnage, Esquire
Steven R. Hart, Qualified Representative
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4229

For Respondent: Leslie G. Michaud, pro se
L and M Airconditioning System, Inc.
49 North Federal Highway, No. 206
Pompano Beach, Florida 33062

STATEMENT OF THE ISSUE

The issue is whether Respondent failed to secure workers' compensation coverage for its employees and, if so, the amount of the penalty to be assessed against Respondent.

PRELIMINARY STATEMENT

By Stop-Work Order and Order of Penalty Assessment served on May 2, 2017 (SWO), Petitioner ordered Respondent to stop work at a particular worksite due to an alleged failure to secure the payment of workers' compensation for its employees.

By Amended Order of Penalty Assessment served on September 20, 2017, Petitioner assessed a penalty against Respondent in the amount of \$39,008.16. After Respondent submitted business records, Petitioner recalculated the penalty and served on October 30, 2017, a Second Amended Order of Penalty Assessment imposing a penalty of \$31,211.10. After Respondent submitted additional business records, Petitioner recalculated the penalty and served on March 8, 2018, a Third Amended Order of Penalty Assessment imposing a penalty of \$29,740.86 (Third Amended OPA).

Respondent timely filed a request for a formal hearing. On August 7, 2018, Petitioner transmitted the file to DOAH.

At the hearing, Petitioner called two witnesses and offered into evidence 14 exhibits: Petitioner Exhibits 1 through 14.

Respondent called one witness and offered into evidence no exhibits. All exhibits were admitted.

The court reporter filed the transcript on November 15, 2018. Petitioner filed a proposed recommended order on November 30, 2018.

FINDINGS OF FACT

1. Respondent installs and maintains air conditioning and heating equipment for residential and commercial applications. On May 2, 2017, Respondent was installing a duct system at 3128 East Hillsborough Avenue in Tampa. Two of Respondent's employees were performing work at the site and were not covered by workers' compensation. Leslie Michaud is the president and sole shareholder of Respondent.

2. The air conditioning installation work performed by Respondent's employees is classified by the National Council on Compensation Insurance (NCCI) as class code 5537. This code is for "Heating, Ventilation, Air-Conditioning and Refrigeration Systems Installation, Service and Repair" During the audit period of May 3, 2015, through May 2, 2017 (Audit Period), code 5537 bore two rates.

3. For the Audit Period, Respondent had no workers' compensation coverage for any of its employees, although it maintained an exemption for Mr. Michaud. For the Audit Period, Respondent's gross payroll was \$213,327.49 exclusive of any

payments to Mr. Michaud. Applying the manual rates during the Audit Period to the gross payroll yields unpaid workers' compensation premium of \$14,870.43.

CONCLUSIONS OF LAW

4. DOAH has jurisdiction. §§ 120.569 and 120.57(1), Fla. Stat. (2018).

5. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Banking & Fin. V. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

6. Section 440.10(1)(a) requires every employer covered by chapter 440 to secure workers' compensation coverage for its employees. Respondent is an employer because it carries on employment. § 440.02(16)(a). An employee is any person who receives remuneration from an employer for work or service while engaged in employment. § 440.02(15)(a).

7. Section 440.107(7)(d)1. provides for the use of the manual rates to calculate the evaded workers' compensation premium and directs Petitioner to assess against any employer that has failed to secure the payment of workers' compensation a penalty equal to the greater of \$1000 or double the premium that the employer would have paid under the manual rates for the preceding two years. Therefore, the penalty is \$29,740.86.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation, enter a final order determining that Respondent failed to secure workers' compensation coverage for its employees during the Audit Period and imposing a penalty of \$29,740.86.

DONE AND ENTERED this 7th day of January, 2019, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 2019.

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.