

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF WORKERS' COMPENSATION,

Petitioner,

vs.

Case No. 20-2670

BEST AFFORDABLE CONTRACTORS, LLC,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 4, 2020, by Zoom conference, before E. Gary Early, an Administrative Law Judge assigned by the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Leon Melnicoff, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4229

For Respondent: Vincent Marino, pro se
Best Affordable Contractors, LLC
1348 Clements Woods Lane
Jacksonville, Florida 32211

STATEMENT OF THE ISSUE

Whether Petitioner, Department of Financial Services, Division of Workers’ Compensation (“Division”), properly issued a Stop-Work Order and 4th Amended Penalty Assessment against Respondent, Best Affordable Contractors, LLC (“Respondent”), for failing to obtain workers' compensation insurance that meets the requirements of chapter 440, Florida Statutes.

PRELIMINARY STATEMENT

On January 3, 2019, the Division issued and served a Stop-Work Order for Specific Worksite Only, No. 19-002-D1, and Order of Penalty Assessment (collectively the “Stop-Work Order”) alleging that Respondent was not in compliance with the workers’ compensation coverage requirements of chapter 440. The Stop-Work Order was posted on the construction site and provided to Vincent Marino on January 4, 2019, and ordered Respondent to cease all business operations being conducted at 1203 Dancy Street, Jacksonville, Florida. The Stop-Work Order set the penalty amount at two times the amount that the employer would have paid in premiums had workers’ compensation insurance been procured within the preceding two-year period.

On February 1, 2019, the Division issued an Amended Order of Penalty Assessment, which was served on Respondent on February 7, 2019.

On February 26, 2020, Respondent timely filed a request for hearing (“Request”).

On June 3, 2020, the Division issued a 2nd Amended Order of Penalty Assessment to Respondent, which was served on Respondent on June 11, 2020.

On June 11, 2020, the Request, Stop Work Order, and 2nd Amended Order of Penalty Assessment were transmitted to DOAH for a formal administrative hearing. The final hearing was scheduled for August 4, 2020.

On July 27, 2020, the Division filed a Motion for Leave to Amend Order of Penalty Assessment, which indicated that the Division had prepared a 3rd

Amended Order of Penalty Assessment, reducing the penalty to \$46,805.02. The Motion was granted.

On July 31, 2020, the parties timely filed their Joint Pre-hearing Stipulation and their respective witness and exhibit lists.

On August 3, 2020, the Division filed a Second Motion for Leave to Amend Order of Penalty Assessment, which indicated that the Division had prepared a 4th Amended Order of Penalty Assessment, further reducing the penalty to \$27,553.78. The Motion was granted, and this case proceeded on the 4th Amended Order of Penalty Assessment.

The hearing convened as scheduled on August 4, 2020. At the final hearing, the Division presented the testimony of Deryck Gallegos, a compliance investigator with the Division's Bureau of Compliance; and Lynne Murcia, penalty auditor for the Division's Bureau of Compliance. Petitioner's Exhibits 1 through 22, 23 (exclusive of pages 493 through 497), and 24 through 29, were received in evidence. Vincent Marino, Respondent's president and sole officer, testified for Respondent. Respondent's Exhibits 1 through 3 were received in evidence.

The one-volume Transcript was filed on August 25, 2020. The parties timely filed their post-hearing submittals, which have been considered in the preparation of this Recommended Order.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant imposition of a penalty. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013). Thus, references to statutes are to Florida Statutes (2018), unless otherwise noted.

FINDINGS OF FACT

1. On July 31, 2020, the parties filed a Joint Pre-hearing Stipulation, by which the parties stipulated to the facts set forth in the following paragraphs 2 through 17.

Stipulated Findings

2. The Division is the state agency responsible for enforcing the statutory requirement that employers secure the payment of workers' compensation for the benefit of their employees and corporate officers.

3. Respondent was engaged in business operations in Florida during the entire period of January 4, 2017, through January 3, 2019.

4. On January 3, 2019, the Division's investigator, Deryck Gallegos, commenced a workers' compensation compliance investigation at Respondent's work site at 1203 Dancy St., Jacksonville, Florida 32205.

5. On January 3, 2019, Respondent had a paid subcontractor, Terry Wayne Lyons, Sr., performing roofing work at 1203 Dancy St., Jacksonville, Florida 32205.

6. On January 3, 2019, Respondent's subcontractor, Terry Wayne Lyons, Sr., had five paid employees performing roofing work at 1203 Dancy St., Jacksonville, Florida 32205: Terry Wayne Lyons, Sr.; Jahru Li-Ly Campbell; Kevin Lee Hagan; Terry Wayne Lyons, Jr.; and Jonathan Wayne McCall.

7. On January 3, 2019, Respondent's subcontractor, Terry Wayne Lyons, Sr., had no workers' compensation exemptions and no workers' compensation insurance coverage.

8. On January 3, 2019, Respondent had no workers' compensation exemptions and no workers' compensation insurance coverage.

9. On January 3, 2019, the Division issued a Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment to Respondent. The Division served the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment on Respondent by personal service on January 4, 2019.

10. The Division served a Request for Production of Business Records for Penalty Assessment Calculation on Respondent on January 4, 2019.

11. On February 1, 2019, the Division issued an Amended Order of Penalty Assessment to Respondent. The Division served the Amended Order of Penalty Assessment on Respondent on February 7, 2019. The Amended Order of Penalty Assessment imposed a penalty of \$353,349.72.

12. On June 3, 2020, the Division issued a 2nd Amended Order of Penalty Assessment to Respondent. The Division served the 2nd Amended Order of Penalty Assessment on Respondent on June 11, 2020. The 2nd Amended Order of Penalty Assessment imposed a penalty of \$68,705.29.

13. On July 30, 2020, the Division served a 3rd Amended Order of Penalty Assessment to Respondent. The 3rd Amended Order of Penalty Assessment imposed a penalty of \$46,805.02.

14. Throughout the penalty period, Respondent was an “employer” in the state of Florida, as that term is defined in section 440.02(16).

15. Respondent did not obtain exemptions from workers’ compensation insurance coverage requirements for the entries listed on the penalty worksheet of the 3rd Amended Order of Penalty Assessment as “Employer’s Payroll” during the penalty period.

16. Respondent did not secure the payment of workers’ compensation insurance coverage, nor did others secure the payment of workers’ compensation insurance coverage, for the entries listed on the penalty worksheet of the 3rd Amended Order of Penalty Assessment as “Employer’s Payroll” during the periods of non-compliance listed on the penalty worksheet.

17. The manual rates, class codes, and gross payroll identified on the penalty worksheet of the 3rd Amended Order of Penalty Assessment are correct to the extent a penalty is due.

Evidentiary Findings

18. Based on business records received from Respondent, the Division has recalculated the assessed penalty. The proposed penalty has been reduced to \$27,553.78. Respondent has paid \$1,000.00 for the release of the Stop Work Order, leaving a remaining penalty of \$26,553.78.

19. In determining the penalty, the Division reviewed Respondent's business and financial records for a period of two years, from January 4, 2017, through January 3, 2019. Respondent was cooperative and forthcoming with the Division in providing its business and financial records.

20. Penalties are calculated first by establishing the nature of the work being performed by employees. That is done by comparing the work to descriptions provided in the National Council of Compensation Insurance (NCCI) SCOPES® Manual. As relevant to this proceeding, the work being performed by persons who were employees of Respondent was as described in SCOPES® Manual class codes 5551 (Roofing - All Kinds & Drivers); 8227 (Construction or Erection Permanent Yard); 5213 (Concrete Construction NOC); and 8810 (Clerical Office Employees NOC).

21. Workers' compensation insurance premium rates are established based on the risk of injury associated with a particular class code. The greater the risk of injury, the greater the premium rate to insure that risk. Work such as roofing entails a significant risk of injury, and the approved manual rate is thus very high. Office and clerical work entails a very low risk of injury, and the approved manual rate is correspondingly very low.

22. When work is performed but it is not specifically identified, e.g., laborer, the highest rated classification code for the business being audited is assigned to the employee. In this case, the highest rated classification code applicable to Respondent is class code 5551, for roofing.

23. The 4th Amended Order of Penalty Assessment reveals payroll for individuals engaged in work described in class codes as follows:

- a) Anthony Wright - class code 5551
- b) Donnell Eugene Johnson - class code 5551
- c) Edward Tipton - class code 8227
- d) Eugene Monts - class code 5213
- e) James Dunlap - class code 5551
- f) James Walters - class code 5551
- g) Jorel Golden - class code 5551
- h) Kelvin Morrison - class code 5551
- i) Matthew Robinson - class code 5551
- j) Vincent Marino - class code 8810
- k) Jahru Li-Ly Campbell - class code 5551
- l) Kevin Lee Hagan - class code 5551
- m) Jonathan Wayne McCall - class code 5551
- n) Terry Lyons, Jr. - class code 5551
- o) Terry Lyons, Sr. - class code 5551

24. Mr. Lyons, Sr., was retained by Respondent as a subcontractor.

Mr. Lyons, Sr., previously held an exemption from workers' compensation as an officer of his company, but it had expired on December 27, 2017.

Mr. Lyons, Sr., was working at the 1203 Dancy Street worksite on January 3, 2019. The evidence was sufficient to establish that Mr. Lyons, Sr., was appropriately assigned as class code 5551. His exemption was accepted up to its date of expiration, so the period applicable to the penalty calculation for Mr. Lyons, Sr., was from December 28, 2017, to January 3, 2019.

25. Mr. Lyons, Sr.'s employees who were working at the 1203 Dancy Street worksite on January 3, 2019, were Mr. Campbell, Mr. Hagan, Mr. McCall, and Mr. Lyons, Jr. The evidence was sufficient to establish that they were employees of Respondent's uninsured subcontractor, and that they were appropriately assigned as class code 5551.

26. Mr. Wright and Mr. Robinson were listed on Respondent's Profit & Loss Detail Sheet as "subcontract labor -- roofing." Respondent was not able

to demonstrate that they were covered by workers' compensation. The evidence was sufficient to establish that Mr. Wright and Mr. Robinson were appropriately included in the penalty calculation, and that they were appropriately assigned as class code 5551.

27. Mr. Johnson, Mr. Dunlap, and Mr. Morrison were listed on Respondent's Profit & Loss Detail Sheet as "subcontract labor -- laborer." Respondent was not able to demonstrate that they were covered by workers' compensation. The evidence was sufficient to establish that Mr. Johnson, Mr. Dunlap, and Mr. Morrison were appropriately included in the penalty calculation, and that they were appropriately assigned as the highest rated classification code applicable to Respondent, class code 5551.

28. Mr. Tipton was listed on Respondent's Profit & Loss Detail Sheet as "subcontract labor -- handyman, yard work/clean up, truck detail." Mr. Monts was listed on Respondent's Profit & Loss Detail Sheet as "subcontract labor -- laborer." Ms. Murcia testified that Mr. Marino provided information that Mr. Monts did concrete work, rather than roofing. Respondent was not able to demonstrate that they were covered by workers' compensation. Mr. Marino indicated that Mr. Tipton and Mr. Monts should have been identified as his personal expenses, performing work at his home. However, they were identified in Respondent's records as subcontract labor, and the payments to them were reported on Respondent's 2017 income tax return as business expenses. They each received multiple payments over an extended period. The evidence was sufficient to establish that Mr. Tipton and Mr. Monts were employees of Respondent. The evidence was sufficient to establish that Mr. Tipton was appropriately assigned as class code 8227, and that Mr. Monts was appropriately assigned as class code 5213. Nonetheless, payments to the two were reduced by 20 percent to account for expenditures for materials, with the remaining 80 percent constituting payroll. Fla. Admin. Code R. 69L-6.035(1)(i).

29. Mr. Marino was not an on-site employee of Respondent, but rather performed administration and clerical functions for Respondent. Mr. Marino previously had workers' compensation, but it had been cancelled on February 28, 2015. The evidence was sufficient to establish that Mr. Marino was appropriately assigned as class code 8810. Mr. Marino obtained an exemption from workers' compensation as an officer of Respondent on January 4, 2019.

30. The evidence established that James Walters performed repairs to Respondent's truck. The evidence was not clear and convincing that Mr. Walters was an employee of Respondent.

31. Jorel Golden was identified solely as the payee on a single check image. He did not appear on Respondent's Profit & Loss Detail Sheet, and there was no evidence as to why Mr. Golden was being paid. The evidence was not clear and convincing that Mr. Golden was an employee of Respondent.

32. The salaries of the employees were calculated based on Respondent's business records. The total gross payroll amounted to \$170,139.07. Except for the amount of payments to Mr. Walters and Mr. Golden, that figure is supported by clear and convincing evidence.

33. The penalty for Respondent's failure to maintain workers' compensation insurance for its employees is calculated as 2.0 times the amount Respondent would have paid in premiums for the preceding two-year period.

34. The NCCI periodically issues a schedule of workers' compensation rates per \$100 in salary, which varies based on the SCOPES® Manual classification of the business. The NCCI submits the rates to the Florida Office of Insurance Regulation, which approves the rates to be applied to the calculation of premiums in Florida.

35. The workers' compensation insurance premium was calculated by multiplying one percent of the gross payroll (\$17,013.91) by the approved

manual rate for each quarter (which varied depending on the quarterly rate), which resulted in a calculated premium of \$18,369.19. Clear and convincing evidence supports a finding that the Division applied the correct rates in calculating the premium.

36. The penalty was determined by multiplying the calculated premium by 2.0, resulting in a final penalty of \$36,738.38.

37. In recognition of Respondent's cooperation in the investigation and the timely submission of its business records, the Division applied a 25 percent reduction in the penalty (\$9,184.60), resulting in a total penalty of \$27,553.78.

38. The evidence established that the Division gave every benefit of the doubt to Respondent to reduce the penalty, and its effect on Respondent, to the extent allowed within the confines of the law and the records provided.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the subject matter and parties pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).

40. The Division is the agency of the State of Florida charged, pursuant to section 440.107(3), with the duty to:

enforce workers' compensation coverage requirements, including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes. In addition to any other powers under this chapter, the department shall have the power to:

(a) Conduct investigations for the purpose of ensuring employer compliance.

- (b) Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance.
- (c) Examine and copy business records.

* * *

- (g) Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section.
- (h) Enforce the terms of a stop-work order.
- (i) Levy and pursue actions to recover penalties.
- (j) Seek injunctions and other appropriate relief.

41. The Division has the burden of proof in this case and must show by clear and convincing evidence that Respondent violated the Workers' Compensation Law during the relevant period and that the penalty assessments are correct. § 120.57(1)(j), Fla. Stat.; *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Pou v. Dep't of Ins.*, 707 So. 2d 941 (Fla. 3d DCA 1998). Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997).

42. It is well-established that the Department has "broad powers to investigate employers, to halt any work where employers are not complying, and to assess penalties on those who do not comply." *Twin City Roofing Constr. Specialists, Inc. v. Dep't of Fin. Servs.*, 969 So. 2d 563, 566 (Fla. 1st DCA 2007).

43. Pursuant to sections 440.10 and 440.38, every "employer" is required to secure the payment of workers' compensation for the benefit of its employees unless exempted or excluded under chapter 440. Strict compliance with the Workers' Compensation Law is, therefore, required by the employer. *See, e.g., Summit Claims Mgmt. v. Lawyers Express Trucking, Inc.*, 913 So. 2d

1182, 1185 (Fla. 4th DCA 2005); *C&L Trucking v. Corbitt*, 546 So. 2d 1185, 1186 (Fla. 5th DCA 1989).

44. Section 440.02(17) defines “employment” to include “any service performed by an employee for the person employing him or her,” and includes “with respect to the construction industry, all private employment in which one or more employees are employed by the same employer.”

45. Section 440.02(8) defines “construction industry” to include “for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land.”

46. Section 440.02(16)(a) defines “employer” to include “every person carrying on any employment.”

47. Section 440.02(15)(a) defines “employee” to include “any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment.”

48. Section 440.02(15)(c)2. also defines “employee” to include:

All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor.

49. Section 440.10(1)(b) provides that:

In 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.

50. Florida Administrative Code Rule 69L-6.015(8)(c) provides, in pertinent part, that “[e]very contractor shall maintain evidence of workers’ compensation insurance of every subcontractor....”

51. Rule 69L-6.032(6) provides, in pertinent part, that:

If 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.

52. The record contains clear and convincing evidence that Respondent was an “employer” for workers’ compensation purposes because it was doing business in the construction industry. The record is equally clear that the persons at the 1203 Dancy Street site, and those listed in Respondent’s business records as subcontract labor, were not covered by workers’ compensation insurance, making Respondent liable for the payment of compensation to all such employees. *See, e.g., VMS, Inc. v. Alfonso*, 147 So. 3d 1071 (Fla. 3d DCA 2014). As such, Respondent was required to secure and maintain compensation for the employees listed in the 4th Amended Order of Penalty Assessment, with the exception of Mr. Walters and Mr. Golden, pursuant to section 440.10.

53. Wages or salaries paid to employees by, or on behalf of, the employer are considered part of an employer’s payroll. Fla. Admin. Code R. 69L-6.035(1)(a).

54. Section 440.107(7)(d)1. provides that:

In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal 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 required by this chapter within the preceding 2-year period or \$1,000, whichever is greater.

55. Penalties are calculated by applying the formula established in the Penalty Calculation Worksheet adopted in rule 69L-6.027. Pursuant to the formula, the penalty is calculated by multiplying one percent of the employer's uninsured gross payroll for the two years prior to incident by the approved manual rate for each quarter, which results in a calculated avoided workers' compensation insurance premium for that two year period. That premium is multiplied by 2.0, a figure set by the Legislature, to determine a final penalty. A credit of 25 percent may be applied against the final penalty if the employer provided its business records to the Division during the course of the investigation.

NCCI Classification Codes

56. Section 440.02(8) provides that the Division "may, by rule, establish standard industrial classification codes and definitions thereof which meet the criteria of the term 'construction industry' as set forth in this section."

57. Rule 69L-6.021(1) provides, in pertinent part, that:

The Division adopts the classification codes and descriptions that are specified in the Florida Contracting Classification Premium Adjustment Program, and published in the Florida exception pages of the National Council on Compensation

Insurance, Inc. (NCCI), Basic Manual (2001 ed.), including updates through January 1, 2011.

58. Rule 69L-6.021(3) provides that:

(3) The Division adopts the definitions published by NCCI, SCOPES® of Basic Manual Classifications (February 2011), including updates through February 1, 2011, that correspond to the classification codes and descriptions adopted in subsection (1) above. The definitions identify the workplace operations that satisfy the criteria of the term “construction industry” as used in the workers’ compensation law. The definitions are hereby incorporated by reference and can be obtained by writing to the Division of Workers’ Compensation, Bureau of Compliance, 200 East Gaines Street, Tallahassee, Florida 32399-4228.

59. Rule 69L-6.035(4) provides that:

For purposes of calculating a penalty pursuant to subparagraph 440.107(7)(d)1., F.S., the payroll for every employee, corporate officer, sole proprietor, and partner will be assigned to the workers’ compensation classification code that corresponds to their respective job duties as evidenced in the employer’s business records, or, if the business records are not sufficient for such assignment, to the highest rated workers’ compensation classification code associated with any employee’s activities based on the investigator’s actual physical observation of work activities.

60. The 4th Amended Order of Penalty Assessment charged Respondent with failing to obtain workers’ compensation insurance coverage for employees engaged in work described in classification codes 5551 (Roofing - All Kinds & Drivers); 8227 (Construction or Erection Permanent Yard); and 5213 (Concrete Construction NOC). Each of those codes is listed in rules 69L-6.021(2) and 69L-6.031(6)(b). The 4th Amended Order of Penalty Assessment also charges Respondent with failing to obtain workers’ compensation

insurance coverage for employees engaged in work described in classification code 8810 (Clerical Office Employees NOC). That code is listed in rule 69L-6.031(6)(c). The Division established, by clear and convincing evidence, that it applied the correct classification codes to the employees listed in the 4th Amended Order of Penalty Assessment.

Approved Manual Rates

61. Section 440.10(1)(g) provides, in pertinent part, that:

Subject to s. 440.38, any employer who has employees engaged in work in this state shall obtain a Florida policy or endorsement for such employees which utilizes Florida class codes, rates, rules, and manuals that are in compliance with and approved under the provisions of this chapter and the Florida Insurance Code.

62. Section 627.091(1), Florida Statutes, provides, in pertinent part, that:

(1) As to workers' compensation and employer's liability insurances, every insurer shall file with the [Office of Insurance Regulation] every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use. ...

63. Florida Administrative Code Rule 69O-189.016(2) provides, in pertinent part, that:

Any insurer authorized to transact workers' compensation and employer's liability insurance in Florida shall file with the Office [of Insurance Regulation] every manual of classifications, rules, rates, rating plans, deviations and every modification of any of the foregoing, which it proposes to use. ... No insurer shall use any workers' compensation and employer's liability classification, rule, rate or rating plan unless it has been filed with the Office [of Insurance Regulation] and the filing has been affirmatively approved.

64. There was no dispute that the Office of Insurance Regulation approved the rates that were applied by the Division in this case.

65. The Division established, by clear and convincing evidence, that it applied the correct approved manual rates to Respondent's payroll in calculating the proposed penalty listed in the 4th Amended Order of Penalty Assessment.

66. The Division correctly applied a 25 percent credit against the calculated penalty in recognition of Respondent's timely submission of its business records during the course of the investigation.

Conclusion

67. Based on the foregoing, the Division proved, by clear and convincing evidence, that Respondent is liable for payment of a penalty in the amount of \$27,553.78, subject to a recalculation upon the subtraction of payments made to Mr. Walters and Mr. Golden from Respondent's payroll, for its failure to secure and maintain workers' compensation insurance for its employees and its subcontracted labor as set forth in the 4th Amended Order of Penalty Assessment.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation enter a final order assessing a penalty of \$27,553.78, against Respondent, Best Affordable Contractors, LLC, for its failure to secure and maintain required workers' compensation insurance for its employees and subcontracted labor, subject to recalculation as provided herein, and subject to Respondent's previous payment of \$1,000.00.

DONE AND ENTERED this 15th day of September, 2020, in Tallahassee,
Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of September, 2020.

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.