

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

IN THE MATTER OF THE PETITION)
FOR A FINDING OF THE FAILURE TO) FINAL DECISION AND ORDER
INSURE WORKERS' COMPENSATION)
LIABILITY, AND ASSESSMENT) AWCB Case No. 700007344
OF A CIVIL PENALTY AGAINST,)
) AWCB Decision No. 20-0103
KINGDOM CONTRACTORS, LLC,)
) Filed with AWCB Anchorage, Alaska
Respondent.) on November 13, 2020.
)

The Division of Workers' Compensation's (the division) April 19, 2019 and July 27, 2020 petitions for failure to insure, discovery sanctions, and for a civil penalty were heard on the written record in Anchorage, Alaska on October 14, 2020, a date selected on September 2, 2020. The division's September 2, 2020 hearing request gave rise to this hearing. Investigator Douglas Love represents the division. Brandon and Kadillac Schmid represent Kingdom Contractors, LLC (Kingdom). The record closed at the hearing's conclusion on October 14, 2020.

ISSUE

The division contends Kingdom operated uninsured for workplace injuries and should be assessed a civil penalty. It contends Kingdom had six aggravating factors, which this decision must consider in assessing a civil penalty. The division also seeks discovery sanctions contending Kingdom failed to comply with *Kingdom Contractors, LLC*, AWCB Decision No. 20-0038 (May 28, 2020) (*Kingdom I*), which ordered it to provide discovery.

Kingdom contends Brandon and Kadillac were “the only two employees,” documents the division sought were unavailable until July 7, 2020, and it provided a “certificate of liability insurance.”

What is an appropriate civil penalty against Kingdom?

FINDINGS OF FACT

All factual findings and conclusions from *Kingdom I* are incorporated herein. The following additional facts are undisputed or established by a preponderance of the evidence:

- 1) On January 31, 2018, Kadillac and Brandon Schmid incorporated Kingdom Contractors, LLC, as a limited liability company with Kadillac as the registered agent and member-manager with 99 percent ownership and Brandon as a member with one percent ownership. (Petition, July 27, 2020, Exhibit 1). As of April 4, 2019, the Division of Corporations, Business and Professional Licensing (CBPL) website listed Kadillac as the registered agent and 99 percent owner and Brandon as one percent owner. (Petition, July 27, 2020, Exhibit 13).
- 2) David Cathey’s March 27, 2019 Facebook photo shows himself standing on a roof with the caption “Cardio.. THERES MORE THAN ONE WAY TO GET MONEY.. KingdomContracting THE FIRST BLACK ROOFING COMPANY AIRH APPRENTICE.. Building literally in our community.” (Petition, July 27, 2020, Exhibit 8).
- 3) On April 19, 2019, the division sought a civil penalty against Kingdom in AWCB Case Number 700007344. On April 19, 2019, the division served the petition and discovery demand to Kadillac and Brandon Schmid at Kingdom’s addresses of record. (Petition, Discovery Demand, April 19, 2019).
- 4) On April 19, 2019, Gabe Kitter, a plumbing inspector at the Alaska Labor Standards and Safety Division, testified that during his February 12, 2019 field inspection on a new home construction in Wasilla, he saw Brandon and “two additional males” performing work consistent with roofing construction. The general contractor in charge of the project, Oleg Ogolenko, confirmed and Brandon admitted Kingdom was the roofing subcontractor. Brandon told Kitter “I just hired these two guys to help me with this roof. . . . they are employees of mine and covered under workers’ comp. . . . Everything is legal.” Kitter also spoke to Kadillac via telephone; she told him “I got a lot of people working for me. . . . I do not know everyone’s

name.” Kadillac told Kitter Brandon was one of her employees. (Affidavit of Gabe Kitter, Petition, July 27, 2020, Exhibit 2).

5) On May 13, 2019, Kingdom added “James Gainey” and “King David Cathey” as additional members with one percent ownership each; Kadillac’s ownership was reduced to 97 percent, and Brandon’s ownership remained unchanged at one percent. (Petition, July 27, 2020, Exhibit 4).

6) Gainey’s May 18, 2019 Facebook photo shows himself shingling a roof and another individual working on the same project. (Petition, July 27, 2020, Exhibit 9).

7) On June 24, 2019, Brandon stated Kingdom does not have any employee at this time and he is working alone. Also, he said he was not served with the April 19, 2019 petition and discovery demand because his mailing address was different. Brandon provided a current mailing address and an email address. The division contended the service of those documents was effective as it had received a delivery confirmation. Brandon said Kingdom had workers’ compensation insurance coverage with Integra; he agreed to email evidence to the division. The parties agreed to further discuss discovery at prehearing conference on August 1, 2019. (Prehearing Conference Summary, June 27, 2019).

8) On August 1, 2019, Brandon expressed his intention to obtain workers’ compensation insurance coverage in that week. The division did not receive discovery as of this date; it agreed to a discovery deadline of August 15, 2019. (Prehearing Conference Summary, August 2, 2019).

9) On August 20, 2019, the division filed and served a petition to compel discovery. (Petition, August 20, 2019).

10) As of October 10, 2019, the division had not received discovery from Kingdom. On this date, Brandon said Kingdom had workers’ compensation insurance coverage and did not have any LLC members with less than 10 percent ownership; therefore, there was no need for further action. The designee provided Brandon a copy of the discovery demand and granted the division’s August 20, 2019 petition to compel discovery. (Prehearing Conference Summary, October 17, 2019; Amended Prehearing Conference Summary, October 29, 2019).

11) As of November 22, 2019, the CBPL website listed Kingdom’s members as follows: Kadillac as 97 percent owner, Brandon as one percent owner, Gainey one percent owner, and Cathey as one percent owner. (Petition, July 22, 2020, Exhibit 7).

- 12) On December 26, 2019, Home Depot produced Kingdom's order reports from January 26, 2018, through March 4, 2020, showing it regularly purchased building materials year-round with a total order amount of \$148,712.59. (Petition, July 27, 2020, Exhibit 15).
- 13) On January 3, 2020, the division filed and served a second petition to compel discovery. (Petition, January 3, 2020).
- 14) As of January 30, 2020, the division had not received discovery from Kingdom. On the same date, the designee granted the division's August 20, 2019 petition to compel discovery and ordered Kingdom to provide discovery by February 17, 2020. (Prehearing Conference Summary, February 3, 2020).
- 15) On February 24, 2020, the division filed and served a petition for a board order requiring Kingdom to provide discovery. (Petition, February 24, 2020).
- 16) On March 19, 2020, Brandon Field, a safety compliance officer at the Alaska Occupational Safety and Health Section, reviewed Kingdom's Facebook photographs and opined they depicted serious safety violations associated with fall protection and equipment use. (Petition, Affidavit of Brandon Field, July 27, 2020, Exhibit 17).
- 17) On March 25, 2020, the Director of the Alaska Workers' Compensation Division issued a stop order prohibiting Kingdom from utilizing employee labor or LLC members with less than 10 percent ownership until it becomes insured for workers' compensation liability. The stop order was served on Kadillac by a state trooper on March 27, 2020. (Director's Stop Order, March 25, 2020; Petition, July 27, 2020, Exhibit 18).
- 18) On May 28, 2020, *Kingdom I* granted the division's February 24, 2020 petition and ordered Kingdom to produce records requested in the division's April 19, 2019 discovery demand by June 19, 2020. It also advised Kingdom that failure to produce records by June 19, 2020, would lead to sanctions including but not limited to dismissing Kingdom's defenses and accepting the division's proffered evidence regarding estimated uninsured employee workdays and workers' compensation insurance premiums Kingdom would have paid had it been insured. (*Kingdom I*).
- 19) On June 1, 2020, Kingdom obtained workers' compensation insurance from Amguard Insurance Company. Its current annual workers' compensation insurance premium is \$890. (Petition, July 27, 2020, Exhibits 3 and 20).
- 20) On July 22, 2020, the division filed and served a petition for discovery sanctions and assessment of civil penalty. (Petition, July 22, 2020).

21) On May 14, 19, 23 and 27, 2020, Brandon posted four videos in his Facebook account showing his roofing work. There is no evidence when these videos were recorded. (Petition, July 27, 2020, Exhibits 22 and 31).

22) On September 1, 2020, Kingdom answered (1) “most of the documents requested were unavailable to Kingdom Contractor LLC until 7.7.2020”; (2) it has provided “current [workers’ compensation] document ‘certificate of liability insurance’”; (3) it lacked “enough information to respond by the 6.19.20 deadline”; and (4) it “attempted to leave what documents available before 7.7.2020.” Kadillac stated, “Brandon and I (Kadillac) were the only two employees for the company with Brandon owning 1% and myself owning the remaining 99%. . . . James Gainey and KingDavid Kathy own their own company. They are brothers who we knew through Precise Roofing because they were coworkers with Brandon Schmid. James Gainey and KingDavid Kathy did work for us when they were members of Kingdom Contractors. They briefly worked about two weeks last year and were paid via check. They have a business that I believe is still in operation, however, it has no association with Kingdom Contractors LLC.” Along with its answer, Kingdom filed a copy of its certificate of liability insurance, Kadillac’s 2017, 2018 and 2019 personal tax returns, and workers’ compensation insurance policy for “Kadillac Schmid dba Schmid Quality Roofing.” It also filed an “Employer’s Calculation” signed by “Kadillac Schmid” certifying “Kingdavid JW Kathey” worked for Kingdom from April 25, 2019, through August 30, 2019, for 106.25 hours, and “James Gainey” worked from April 30, 2019, through June 6, 2019, for 87.50 hours. (Answer to Petition, September 1, 2020).

23) Kingdom’s Facebook photographs show several laborers working on various construction projects during different seasons. (Petition, July 27, 2020, Exhibit 14).

24) Kingdom regularly hired at least two laborers and operated its business year-round. (Judgment; inferences from the above).

25) Kingdom did not have workers’ compensation coverage from January 31, 2018, through June 1, 2020, totaling 851 calendar days. However, there were 79 calendar days between May 13, 2019, the date Kingdom added Gainey and Cathey as its LLC members, and August 1, 2019, the date the current AS 23.30.240 became effective. Thus, there were 772 uninsured calendar days (851 - 79 = 772). The prorated premium for Kingdom’s policy is \$2.44 per day (\$890 divided by 365 days), which totals \$1,883.68 for 772 uninsured calendar days. Two times the prorated amount is \$3,767.36. (Observation; judgment; inferences from the above).

26) The division contends six aggravating factors apply to Kingdom: (1) failure to obtain workers' compensation insurance within 10 days after the division's notification of a lack of workers' compensation insurance; (2) a violation of AS 23.30.075 that exceeds 180 calendar days; (3) an issuance of a stop order by the board under AS 23.30.080(d), or the director under AS 23.30.080(e); (4) a violation of a stop order issued by the board under AS 23.30.080(d), or the director under AS 23.30.080(e); (5) failure to comply with the division's initial discovery demand within 30 days after the demand; and (6) lapses in business practice that would be used by a reasonably diligent business person. With six aggravating factors, the division contends the penalty range should be between \$51 and \$499 per uninsured employee workday pursuant to 8 AAC 45.176(a)(4) and at least twice the premiums Kingdom avoided paying by failing to secure workers' compensation insurance. However, since Kingdom failed to produce discovery, which would have allowed for an accurate calculation of the uninsured employee workdays, the division contends the penalty should be calculated based on Kingdom's current workers' compensation insurance premiums. (Memorandum in Support of Petition for Sanctions for Failure to Respond to Discovery Pursuant to Interlocutory Decision and Order No. 20-0038, July 27, 2020).

27) A general liability insurance policy does not cover workers' compensation liability. (Experience).

28) Kingdom did not comply with *Kingdom I* or prior discovery orders; it did not produce any items set forth in the division's April 19, 2019 discovery demand. (Agency file; observation; judgment).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.075. Employer's liability to pay. (a) An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or shall furnish the

division satisfactory proof of the employer's financial ability to pay directly the compensation provided for. . . .

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the division, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

AS 23.30.080. Employer's failure to insure. . . .

. . . .

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board may issue a stop order at the request of the division prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 a day. The employer may not obtain a public contract with the state or a political subdivision of the state for three years following the violation of the stop order.

(e) If a representative of the department investigates an employer's failure to file the evidence of compliance required by AS 23.30.085 and, after investigation, there is substantial evidence that the employer failed to insure or provide security as required by AS 23.30.075, the representative shall inform the employer. The representative may request the director to issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The director may issue a stop order, without a hearing, based on the representative's investigation. The director shall dissolve a stop order issued under this subsection upon receipt of substantial evidence that the employer is insured or has provided security as required by AS 23.30.075(a). If an employer fails to comply with a stop order issued under this subsection, the division may petition the board to assess a civil penalty. The board may assess a civil penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection may not obtain a public contract with the state or a political subdivision of the state for the three years following violation of the stop order.

(f) If an employer fails to insure or provide security as required by AS 23.30.075, the division may petition the board to assess a civil penalty of up to \$1,000 for each employee for each day an employee is employed while the employer failed to insure or provide the security required by AS 23.30.075. . . .

(g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f) of this section within seven days after the date of service of the order upon the employer, the director may declare the employer in default. . . .

Alaska's penalty provision in AS 23.30.080(f) is one of the highest in the nation. *In re Alaska Native Brotherhood #2*, AWCBC Decision No. 06-0113 (May 8, 2006). Alaska's statute's severity is a policy statement: Failure to insure for workers' compensation liability will not be tolerated in Alaska.

A penalty is based on the unique circumstances arising in each case. The primary goal in assessing a penalty under AS 23.30.080(f) is not to be unreasonably punitive, but rather is to bring an employer into compliance, deter future lapses, ensure continued employment for the business' employees in a safe work environment, and satisfy the community's interest in fairly penalizing an offender. *In re Alaska R&C Communications, LLC v. State*, AWCAC Decision No. 088 (September 16, 2008). The division has the burden of production and persuasion on facts and circumstances to support imposing a particular penalty, including factors supporting an enhanced penalty. The employer also has the burden to establish facts and circumstances that may be considered to excuse or mitigate a penalty. *Id.* at 23. A penalty is not intended to destroy a business or cause employment loss. *Id.* at 27.

In *In re Titan Enterprises, LLC*, AWCAC Decision No. 227 (July 11, 2016), the commission said the board's first task is to set the total penalty in an amount proportionate to the employer's financial gain and resources at the time of the lapse. *Id.* at 26. *In re Titan Enterprises* stated:

There is no presumption that an employer is able to pay a particular penalty simply because the penalty is within the range established by statute; therefore, since the division seeks imposition of the penalty, it is the division's burden to show that the penalty sought is payable by the employer. *Id.* at 27.

AS 23.30.122. Credibility of witnesses. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the

weight to be accorded a witness's testimony . . . is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. . . .

AS 23.30.135. Procedure before the board. (a) In making an investigation or inquiry or conducting a hearing, the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

The board's credibility findings are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

AS 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations, and members of limited liability companies as employees.

(a) Except as provided in (b) of this section, an executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation or a member of a limited liability company organized under AS 10.50 is not an employee of the business entity under this chapter if the executive officer or member owns at least 10 percent of the business entity. . . .

Before the 2018 amendment, effective August 1, 2019, AS 23.30.240(b) stated "Except as provided in this subsection, a member of a limited liability company organized under AS 10.50 is not an employee of the company under this chapter. . . ."

8 AAC 45.120. Evidence
. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. . . .

8 AAC 45.176. Failure to provide security: assessment of civil penalties. (a) If the board finds an employer to have failed to provide security as required by AS 23.30.075, the employer is subject to a civil penalty under AS 23.30.080(f), determined as follows:

....

(4) if an employer is found to have no more than six aggravating factors, the employer will be assessed a civil penalty of no less than \$51 and no more than \$499 per uninsured employee workday; however, the civil penalty may not be less than two times the premium the employer would have paid had the employer complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (3) of this subsection. . . .

(d) For the purposes of this section, ‘aggravating factors’ include

(1) failure to obtain workers’ compensation insurance within 10 days after the division’s notification of a lack of workers’ compensation insurance;

....

(3) a violation of AS 23.30.075 that exceeds 180 calendar days;

....

(5) issuance of a stop order by the board under AS 23.30.080(d);

(6) violation of a stop order issued by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);

(7) failure to comply with the division's initial discovery demand within 30 days after the demand;

....

(14) lapses in business practice that would be used by a reasonably diligent business person, including

....

(B) failure to properly supervise employees; and

(C) failure to gain a familiarity with laws affecting the use of employee labor; . . .

ANALYSIS

What is an appropriate civil penalty against Kingdom?

There is no evidence Kingdom insured for workers’ compensation liability from January 31, 2018, the date the LLC was formed, through June 1, 2020, the date it obtained workers’ compensation insurance coverage for the first time. Kingdom contends its general liability

insurance policy covers workers' compensation liability; this is incorrect. *Rogers & Babler*. Kingdom contends Brandon and Kadillac were the only two employees except when Cathey worked from April 25, 2019, through August 30, 2019, and Gainey worked from April 30, 2019, through June 6, 2019, as LLC members.

Nevertheless, Kitter testified that on February 12, 2019, he saw Brandon and "two additional males" working together. Both the general contractor and Brandon told him Kingdom was the roofing subcontractor, and Brandon said, "I just hired these two guys to help me with this roof. . . . they are employees of mine and covered under workers' comp. . . . Everything is legal." When Kitter spoke to Kadillac via telephone, she told him "I got a lot of people working for me. . . . I do not know everyone's name." Also, Cathey's March 27, 2019 Facebook photo shows himself standing on a roof with the caption "Cardio.. THERES MORE THAN ONE WAY TO GET MONEY.. KingdomContracting THE FIRST BLACK ROOFING COMPANY AIRH APPRENTICE.. Building literally in our community." Gainey's May 18, 2019 Facebook photo shows himself shingling a roof and another individual working on the same project. Further, contrary to "Employer's Calculation" signed and certified by Kadillac that "Kingdavid JW Kathey" worked for Kingdom from April 25, 2019, through August 30, 2019, Brandon stated at the June 24, 2019 prehearing conference that Kingdom did not have any employees at that time and he was working alone. Kingdom's Facebook photographs depict several laborers working on various construction projects during different seasons. In short, Kitter's testimony supplemented by various evidence support a finding that Kingdom regularly employed at least two individuals from January 31, 2018, through June 1, 2020. AS 23.30.122; AS 23.30.135; 8 AAC 45.120(e); *Smith*.

Kingdom contends because Cathey and Gainey were added as LLC members with one percent ownership each on May 13, 2019, they could not be employees. The applicable statute §240(a) requires a member to own at least 10 percent of an LLC to be a non-employee; however, this amendment came into effect on August 1, 2019. Before the 2018 amendment, §240(b) stated "a member of a limited liability company . . . is not an employee of the company. . . ." and consequently, Cathey and Gainey may not be considered to be Kingdom's employees from May 13, 2019, through August 1, 2019. Therefore, Kingdom was uninsured for workplace injuries

from January 31, 2018, through May 12, 2019, and from August 1, 2019, through May 31, 2020, totaling 772 uninsured calendar days.

The division contends six aggravating factors apply to Kingdom. One factor can be eliminated at the outset. Four video files proffered by the division to support Kingdom's alleged violation of the March 25, 2020 stop order lacks foundation; these sequential videos show Brandon narrating progress of his roofing project. The videos may have been uploaded to his Facebook account on May 14, 19, 23, and 27, 2020, after the stop order; but it is unclear when they were recorded. Thus, without any evidence that Brandon actually recorded those videos after March 25, 2020, the aggravating factor under 8 AAC 45.176(d)(6) is not applicable, and the division's request for a civil penalty for Kingdom's violation of the March 24, 2020 stop order is denied. AS 23.30.135; 8 AAC 45.120(e).

Five alleged aggravators remain. Kingdom failed to obtain workers' compensation insurance within 10 days after the division served the April 19, 2019 petition. 8 AAC 45.176(d)(1). It failed to obtain workers' compensation insurance coverage for 772 calendar days. 8 AAC 45.176(d)(3). A stop order was issued and served on March 27, 2020. 8 AAC 45.176(d)(5). Kingdom failed to comply with the division's April 19, 2019 discovery demand within 30 days after the demand. 8 AAC 45.176(d)(7). Lastly, Kingdom failed to properly supervise its employees; Field testified he reviewed Kingdom's worksite photographs and found 10 serious safety violations. 8 AAC 45.176(d)(14).

With five aggravating factors, the penalty range could be between \$51 and \$499 per uninsured employee workday pursuant to 8 AAC 45.176(a)(4) and at least twice the omitted premiums Kingdom avoided paying by failing to secure workers' compensation insurance. However, since Kingdom failed to produce discovery, which would have allowed for an accurate calculation of the uninsured employee workdays, the penalty should be calculated based on its current workers' compensation insurance premium. The prorated premium for Kingdom's policy is \$2.44 per day (\$890 divided by 365 days), which totals \$1,883.68 for 772 uninsured calendar days. Two times the prorated amount is \$3,767.36. 8 AAC 45.176(a)(4).

The law provides stiff civil penalties for uninsured employers. AS 23.30.080(f); 8 AAC 45.176(a); *In re Alaska Native Brotherhood #2*. However, the goal in assessing a civil penalty is not to put employers out of business or destroy employment. The purpose in assessing a civil penalty is to bring them into compliance, deter future lapses, ensure continued employment for their workers in a safe environment, and fairly penalize them as offenders. *In re Alaska R&C*. This decision must also consider Kingdom's ability to pay. *In re Titan Enterprises*. Due to Kingdom's failure to comply with discovery, it is not plausible to determine its income. However, considering that from January 26, 2018, through March 4, 2020, Kingdom purchased \$148,712.59 in building materials from Home Depot and Kingdom operates year-round, more likely than not, Kingdom generates adequate dispensable income to meet its financial obligations, and evidence supports it can pay \$3,767.36. 8 AAC 45.176(a)(4); *Rogers & Babler*; *Titan*. Therefore, Kingdom will be assessed a civil penalty in the amount of \$3,767.36.

CONCLUSION OF LAW

\$3,767.36 is an appropriate civil penalty against Kingdom.

ORDER

- 1) The division's April 19, 2019 and July 27, 2020 petitions against Kingdom are granted in part and denied in part.
- 2) Pursuant to AS 23.30.080(f), Kingdom is assessed \$3,767.36 in a civil penalty.
- 3) The division's request for a civil penalty for Kingdom's violation of the March 24, 2020 stop order is denied.
- 4) Pursuant to AS 23.30.075(b) and AS 23.30.080(g), Kingdom shall pay \$3,767.36 within seven days of this decision's date.
- 5) Kingdom is ordered to make its payment to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. **Kingdom is ordered to make its check payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCB Case Number 700007344, and AWCB Decision Number 20-0103.**

6) The division’s Collection Officer is ordered to prepare a proposed Liability Discharge Order within 120 days of Kingdom’s full and timely civil penalty payment as set forth in this decision and order. The proposed order will be addressed in accord with 8 AAC 45.130.

Dated in Anchorage, Alaska on November 13, 2020.

ALASKA WORKERS’ COMPENSATION BOARD

/s/
Jung M Yeo, Designated Chair

/s/
Sara Faulkner, Member

/s/
Bronson Frye, Member

APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the board’s office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers’ Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the board are parties to an appeal. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied because the board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers’ Compensation Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers’ Compensation Division and all parties. Any party may cross-appeal by filing with the Alaska Workers’ Compensation Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

In re KINGDOM CONTRACTORS LLC

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Kingdom Contractors, LLC; Employer / respondent; Case No. 700007344; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served upon the parties by certified U.S. Mail, postage prepaid, on November 13, 2020.

/s/
Nenita Farmer, Office Assistant