

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2907349
RAINBOW RAIN GUTTERS CO
13440 SW 62ND ST APT G102
MIAMI FL 33183-5185

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2009-108479L**

ORDER

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the Petitioner's request to reopen the appeal is DISMISSED and the Recommended Order of Dismissal dated November 12, 2009, is REINSTATED. It is also ORDERED that the Petitioner's appeal to the determination dated June 30, 2009, is DISMISSED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **October, 2010**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 346 Caldwell Building
107 East Madison Street
Tallahassee FL 32399-4143

PETITIONER:

Employer Account No. - 2907349
RAINBOW RAIN GUTTERS CO
KATIA ORTIZ
13440 SW 62ND ST Apt G102
MIAMI FL 33183-5185

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2009-108479L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner’s protest of the Respondent’s determination dated June 30, 2009.

After due notice to the parties, a telephone hearing was held on August 11, 2010. The Petitioner, represented by the Petitioner’s president, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue:

Whether services performed for the Petitioner by the Joined Party and other individuals working as office managers/receptionists constitute insured employment pursuant to Sections 443.036(19), 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of the liability.

Whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

Whether the Petitioners corporate officers received remuneration for employment which constitutes wages, pursuant to Sections 443.036(21), (44), Florida Statutes; Rule 60BB-2.025, Florida Administrative Code.

TIMELINESS: Whether a request for rehearing was filed by a party entitled to notice of an adverse determination within fifteen days after mailing of the recommended order to the address of record or, in

the absence of mailing, within fifteen days after delivery of the order, pursuant to Florida Administrative Code Rule 60BB-2.035(18).

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 60BB-2.035(18).

Findings of Fact:

1. As a result of a claim for unemployment compensation benefits filed by the Joined Party, the Department of Revenue conducted an investigation to determine if the Joined Party was an employee of the Petitioner or whether the Joined Party was an independent contractor.
2. The Petitioner is a corporation which operates a business from the home of the Petitioner's president. When the corporation was formed on January 4, 2005, the Petitioner listed the home address of the president as the principal address and as the mailing address for the Petitioner. Although the president lives in an apartment complex the Petitioner did not list the apartment number in the address.
3. The Petitioner reported the Joined Party's earnings to the Internal Revenue Service. On the form completed by the Petitioner the Petitioner listed the Petitioner's address without the apartment number.
4. During the course of the investigation conducted by the Department of Revenue the Petitioner completed an *Independent Contractor Analysis* and a *Firm's Statement of Claimant's Work and Earnings*. On both forms the Petitioner listed the Petitioner's address as the address of the Petitioner's president without the apartment number.
5. On June 30, 2009, the Department of Revenue issued a determination holding that the Joined Party and other individuals performing services as office managers/receptionists were the Petitioner's employees and that the Petitioner was responsible for payment of unemployment compensation taxes on the wages of the Joined Party, other employees, and corporate officers. The determination was mailed to the Petitioner's address as provided by the Petitioner. The address did not include the apartment number. The Petitioner filed an appeal by facsimile on July 7, 2009. The Petitioner did not provide any other address when it filed the appeal.
6. Pursuant to the appeal filed by the Petitioner a telephone hearing was held on November 12, 2009. The Petitioner did not participate and on November 12, 2009, a *Recommended Order of Dismissal* was mailed to the Petitioner's address as reflected on all of the Petitioner's prior correspondence and documents.
7. The *Recommended Order of Dismissal* was received by the Petitioner.
8. By facsimile sent on December 31, 2009, the Petitioner requested a new hearing. For the first time the Petitioner included "apartment G102" as part of the mailing address.

Conclusions of Law:

9. Rule 60BB-2.035, Florida Administrative Code, provides:
 - (18) Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file

exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.

10. Rule 60BB-2.035(19)(c), Florida Administrative Code, provides that any party aggrieved by the Recommended Order may file written exceptions to the Director or the Director's designee within 15 days of the mailing date of the Recommended Order.
11. Rule 60BB-2.023(1), Florida Administrative Code, provides in pertinent part that it is the responsibility of each employing unit to maintain a current address of record with the Department.
12. Rule 60BB-2.022(1), Florida Administrative Code, defines "Address of Record" for the purpose of administering Chapter 443, Florida Statutes, as the mailing address of a claimant, employing unit, or authorized representative, provided in writing to the Agency, and to which the Agency shall mail correspondence. (emphasis supplied)
13. Rule 60BB-2.025(2)(b), Florida Administrative Code, provides that employers must report changes to business name, address, ownership, officers, legal entity status, (such as from sole proprietorship to corporation or from partnership to limited liability company) and business operations in the manner required on Form UCS-3, *Employer Account Change Form*, or by writing to the Department. (emphasis supplied)
14. The evidence presented in this case reveals that the Petitioner notified the Department of Revenue in writing of its principal address and mailing address. As provided by the Petitioner the Petitioner's official address of record, prior to December 31, 2009, was the address of the president's home without the apartment number.
15. The *Recommended Order of Dismissal* was mailed to the Petitioner's official address of record on November 12, 2009, and was received.
16. The Petitioner has not provided any evidence or testimony concerning the date that the *Recommended Order of Dismissal* was received. The Petitioner has not alleged late receipt of the *Recommended Order of Dismissal*.
17. The Petitioner's request for reopening of the appeal was not filed within fifteen days of November 12, 2009. Thus, the special deputy is without jurisdiction to reopen the appeal.

Recommendation: It is recommended that the Petitioner's request to reopen the appeal be dismissed and that the *Recommended Order of Dismissal* dated November 12, 2009, be reinstated.

Respectfully submitted on August 12, 2010.



R. O. SMITH, Special Deputy
Office of Appeals