

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

Employer Account No. - 9852203
HEALTH COUNCIL OF SOUTH FLORIDA INC
ATTN MIGUEL MUDAFORD FINANCIAL ADMN
8095 NW 12TH STREET STE 300
DORAL FL 33126-1844

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2013-45498L**

ORDER

This matter comes before me for final Department 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 determination dated April 15, 2013, is REVERSED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **September, 2013**.



Altemese Smith,
Bureau Chief,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanendra Y. Barnes

DEPUTY CLERK

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the _____ day of September, 2013.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

HEALTH COUNCIL OF SOUTH FLORIDA
INC
ATTN MIGUEL MUDAFORD FINANCIAL
ADMN
8095 NW 12TH STREET STE 300
DORAL FL 33126-1844

DEPARTMENT OF REVENUE
ATTN: JODY BURKE
4230-D LAFAYETTE ST.
MARIANNA, FL 32446

MIAMI TAX OFFICE
ATTN: MERCEDES FAJARDO
8175 NW 12TH STREET SUITE 119
MIAMI FL 33126

MIAMI TAX OFFICE
ATTN: HISAE TANAKA, TAX AUDITOR III
8175 NW 12TH STREET STE 237
MIAMI FL 33126-1831

State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

DEPARTMENT OF ECONOMIC OPPORTUNITY

Reemployment Assistance Appeals

MSC 347 CALDWELL BUILDING

107 EAST MADISON STREET

TALLAHASSEE FL 32399-4143

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**PROTEST OF LIABILITY
DOCKET NO. 2013-45498L**

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Altemese Smith,
Bureau Chief,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated April 15, 2013.

After due notice to the parties, a telephone hearing was held on August 8, 2013. The Petitioner, represented by its Financial Administrator, 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 constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 73B-10.035(18).

Findings of Fact:

1. The Petitioner, The Health Council of South Florida, Inc., is a Florida non-profit corporation which was formed in 1983 as part of a statewide network of agencies created to conduct regional health planning and implementation activities.

2. In early 2013 the Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2011 tax year to ensure compliance with the Florida Reemployment Assistance Program Law. The Petitioner's Financial Administrator provided the books and records to the Department of Revenue. The audit was performed at the offices of the Department of Revenue.
3. The tax auditor examined the 1099 forms supplied by the Petitioner and concluded that the services provided by the individuals to whom the 1099 forms were issued did not constitute insured employment. One of those individuals was Albert Collazo who performed services as a community coordinator. Further examination revealed that, at the time of the audit, Albert Collazo was listed as an officer of the corporation. The tax auditor concluded that Albert Collazo was not an independent contractor during 2011 since he was currently listed as an officer of the corporation.
4. The Petitioner appointed Albert Collazo as an officer in April 2012. The Petitioner filed its 2012 *Not-For-Profit Corporation Annual Report* on April 18, 2012, listing Albert Collazo as a corporate officer.
5. On April 15, 2013, the tax auditor issued a *Notice of Proposed Assessment* showing that additional taxes were due as a result of the audit. The Petitioner filed a timely protest by mail postmarked May 3, 2013.
6. Pursuant to the protest filed by the Petitioner a telephone hearing was scheduled to be held on June 24, 2013. The Petitioner did not receive notice of the hearing and did not participate in the scheduled hearing. On June 24, 2013, a *Recommended Order of Dismissal* was mailed to the Petitioner. The Petitioner requested reopening by letter dated June 28, 2013.

Conclusions of Law:

7. Rule 73B-10.035, 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.
8. Rule 73B-10.035(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.
9. The Petitioner requested reopening of the protest within fifteen days of the mailing date of the *Recommended Order of Dismissal*. Thus, the request was timely filed. The Petitioner did not attend the previously scheduled hearing on June 24, 2013, because the Petitioner did not receive notice of the hearing. Thus, good cause for reopening has been established.
10. Section 443.1216(1)(a), Florida Statutes, provides in pertinent part:

The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

 1. An officer of a corporation.

11. Section 443.036(20)(c), Florida Statutes provides that a person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.
12. The tax auditor concluded that Albert Collazo was an employee of the Petitioner in 2011 because Albert Collazo was an officer of the corporation when the audit was performed in 2013. However, Albert Collazo's tenure as a corporate officer did not begin until April 2012. No competent evidence has been presented to show that Albert Collazo was an employee of the Petitioner during any part of 2011.

Recommendation: It is recommended that the determination dated April 15, 2013, be REVERSED.

Respectfully submitted on August 9, 2013.



R. O. SMITH, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke Lòd Rekòmande a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke Lòd Rekòmande a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:
August 9, 2013**

Copies mailed to:

Petitioner

Respondent

DEPARTMENT OF REVENUE
ATTN: JODY BURKE
4230-D LAFAYETTE ST.
MARIANNA, FL 32446

MIAMI TAX OFFICE
ATTN: MERCEDES FAJARDO
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