

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

EMPLOYER NO. UE-2005-03-02

**A. L. Stanley and A. L. Stanley Enterprises, Inc.
d/b/a Stanley Janitorial & Carpet Care
a/k/a Stanley Janitorial Service**

OPINION AND ORDER FILED APRIL 5, 2006

Proceeding before Administrative Law Judge Barbara W. Webb on April 3, 2006, at Little Rock, Pulaski County, Arkansas.

Commission's Compliance Division appeared by and through its Compliance Investigator, Mr. Dale Bennett

Employer appeared in person and by his attorney, George S. Ivory, Jr. Also appearing was claimant, Regina Rushing, and attorney Edward Morgan.

STATEMENT OF THE CASE

A hearing was scheduled in the above-styled case on April 3, 2006 to determine whether Anthony Stanley, individually, and A. L. Stanley Enterprises, Inc. (hereinafter referred to as "Employer") should be held in contempt for failure to comply with orders of this Commission. Notice of the April 3, 2006 hearing was served on Employer and their counsel.

A review of the relevant facts and prior actions of this Commission is warranted. Based upon information and belief, the Compliance Division of the Arkansas Workers' Compensation Commission advised Employer that it was in violation of the law for failure to carry workers' compensation insurance for its employees. Following efforts to obtain voluntary compliance, the matter was

ultimately referred to this Administrative Law Judge for review and determination concerning what action should be taken.

On March 29, 2005, an Order and Notice of Hearing was filed charging Employer with non-compliance of the law and assessing the maximum statutory penalty of Ten Thousand Dollars (\$10,000.00) pursuant to Ark. Code Ann. § 11-9-406 (Repl. 2002). The Order stated that it would become final twenty (20) days after Employer's receipt, unless a written request for a hearing was filed with the Commission. In addition, Employer was ordered to obtain and show proof of workers' compensation insurance within twenty (20) days of Employer's receipt of said Order. No hearing was requested and Employer failed to timely pay the assessed fine. Employer submitted proof of coverage effective May 15, 2005. On May 31, 2005, an Order and Notice of Hearing was entered which directed Employer to appear for a hearing on June 29, 2005 and show cause why additional sanctions should not be imposed for contempt for failure to abide with a prior order or instructions of the Commission. At the request of Employer, a hearing was scheduled for July 5, 2005. On the request of Employer, the hearing was rescheduled until July 14, 2005, in order to permit Employer additional time to retain an attorney.

A hearing was conducted on July 14, 2005. At the hearing, Employer requested an additional thirty (30) days in which to retain an attorney. The

request was granted and the case was set for a prehearing telephone conference on August 3, 2005. At the prehearing telephone conference, George S. Ivory, Jr. entered his appearance as counsel for Employer and the case was set for hearing on August 18, 2005. On August 15, 2005, Mr. Ivory requested in writing that the hearing be rescheduled. The case was reset to September 8, 2005.

Prior to the hearing, the Compliance Division and Employer reached a settlement in connection with this matter. On September 29, 2005, an Opinion and Order was entered approving the recommended settlement agreement. Pursuant to the Order, Employer was ordered to pay the sum of One Thousand Dollars (\$1,000.00), maintain workers' compensation coverage for its employees, pay all adjudicated claims during the period of non-coverage, and be monitored for compliance with the agreement and appropriate law. Nine Thousand Dollars (\$9,000) of the Ten Thousand Dollar (\$10,000) fine for non-compliance was suspended and held in abeyance. In addition, the contempt fine of Ten Thousand Dollars (\$10,000.00) was held in abeyance.

Employer paid the court costs on September 21, 2005 and the \$1,000 civil penalty on October 9, 2005. However, Employer failed to pay the adjudicated claim of Regina Rushing as set forth in Orders dated April 25, 2005 and December 6, 2005 in F406697.

Based upon the foregoing, an Order and Notice of Hearing was filed February 1, 2006, directing Employer to appear and show cause, if any there be, why it should not be held in contempt for failure to abide with a prior Order or instructions of this Commission and why the Commission should not now impose the suspended fines of Nineteen Thousand Dollars (\$19,000.00) for violation of one of the conditions of the September 29, 2005 Opinion and Order, and petition the Circuit Court for an order enjoining Employer from engaging in further employment practices until such time as Employer makes full payment of all benefits and penalties owed pursuant to Arkansas Code Annotated § 11-9-406(b)(6).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction in this matter.
- 2) Employer secured the payment of compensation as defined in Subchapter 4 of the Arkansas Workers' Compensation Act, Ark. Code Ann. § 11-9-401, et seq effective May 15, 2005. Coverage lapsed on December 14, 2005, but Employer reinstated coverage effective December 15, 2005 and e remains in effect.
- 3) Employer paid the court costs of \$109.29 on September 21, 2005. Employer also paid a civil penalty of \$1,000 on October 9, 2005.

- 4) Employer has failed to pay the adjudicated claim of Regina Rushing as set forth in the Orders dated April 15, 2005 and December 6, 2005 in F406697.
- 5) Employer has failed and refused to comply with a final order of this Commission and, therefore, is found to be in contempt pursuant to Ark. Code Ann. § 11-9-706(b)(Repl. 2002).
- 6) Based on a proposed payment plan reached by agreement with claimant, Employer has demonstrated good faith in attempting to comply with the September 29, 2005 Opinion and Order at this time; therefore, all suspended fines shall continue in abeyance pending full payment of the adjudicated claim of Regina Rushing.

DISCUSSION

At the hearing, the Commission received the testimony of Anthony L. Stanley. Stanley testified that he had dissolved A. L. Stanley Enterprises, Inc. and was no longer in business. Stanley admitted that he had made no payments on the adjudicated claim at issue. Stanley further testified that he intended to start up a new cleaning business. During this proceeding, counsel for Mr. Stanley and counsel for Regina Rushing announced that a settlement had been reached regarding a proposed payment plan in connection with the adjudicated claim of

Ms. Rushing. The agreement will be documented by counsel and will contain, in essence, the following provisions:

(1) Payments of \$300 per month for 24 months from Employer to claimant, secured by a lien on a 1997 Toyota pickup.

(2) At the conclusion of 24 months, the remaining amount owed will become due and payable unless further agreement is reached as to the amount of monthly payments.

ORDER

_____ Pursuant to Arkansas Code Annotated §11-9-706 and 11-9-406(a), Employer is hereby ordered and directed to pay an additional penalty of Nineteen Thousand Dollars (\$19,000) endorsed to the Arkansas Workers' Compensation Commission, P. O. Box 950, Little Rock, Arkansas 72203-950. However, said penalty will be held in abeyance pending payments to the claimant pursuant to the announced settlement agreement herein. Additionally, Employer is advised that the Compliance Division will continue to monitor Employer to ensure that it continues to provide workers' compensation coverage for its employees. Any lapse of coverage will result in additional sanctions. In the event Employer fails to abide by the terms of this Order, this Commission may petition the Circuit Court of Pulaski, Arkansas for an order enjoining Employer from engaging in further employment until such time as Employer

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makes full payment of all civil penalties as provided by Arkansas Code

Annotated §11-9-406(b)(6) (Repl.2002)

IT IS SO ORDERED.

Honorable Barbara Webb
Administrative Law Judge