

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

IN THE MATTER OF THE PETITION)
FOR A FINDING OF FAILURE TO)
INSURE WORKERS' COMPENSATION) FINAL DECISION AND ORDER
LIABILITY, AND ASSESSMENT)
OF A CIVIL PENALTY AGAINST,) AWCB Case No. 700004468
))
) AWCB Decision No. 14-0137
ROBERT ALEXANDER, sole proprietor,)
dba BINGO SOUTH, TRI-GRILL,) Filed with AWCB Anchorage, Alaska
ALEXANDER'S PAINTING, S LOUNGE) on October 10, 2014
BAR & GRILL, FUSIONS BAR & GRILL;)
and ROBERT ALEXANDER and HAN)
YOUNG CHO, a partnership, dba FUSIONS)
BAR & GRILL,)
))
Respondents.)
_____)

The Division of Workers' Compensation, Special Investigations Unit's Petition for Failure to Insure Workers' Compensation Liability and Assessment of a Civil Penalty, as amended, was heard in Anchorage, Alaska on September 17, 2014, a date selected on June 19, 2014. Investigator Christine Christensen represented the Special Investigations Unit ("SIU" or "Division") and testified. Robert Alexander appeared, represented both himself as sole proprietor and the partnership with Han Young Cho, and testified. The record closed on September 19, 2014, after Mr. Alexander filed additional evidence.

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ISSUES

The Division contends Mr. Alexander operated several businesses as a sole proprietorship, and one business in partnership with Han Young Cho, using employee labor without maintaining workers' compensation insurance. The Division contends a civil penalty should be assessed.

Mr. Alexander concedes the Division's allegations and asks that mitigating circumstances be considered in assessing any penalty. Mr. Alexander also accepts sole responsibility for any penalties which may be assessed against the partnership.

1) Should penalties be assessed against Robert Alexander, sole proprietor, for failure to insure for workers' compensation liability, and if so, in what amounts?

2) Should penalties be assessed against the partnership of Robert Alexander and Han Young Cho, doing business as Fusions Bar & Grill, for failure to insure for workers' compensation liability, and if so, in what amounts?

FINDINGS OF FACT

The following facts and factual conclusions are either undisputed or established by a preponderance of the evidence:

- 1) Robert Alexander is a sole proprietor, owning and operating Alexander's Painting since April 19, 2002, Bingo South since September 10, 2010 and Tri-Grill since June 6, 2012. (Alexander; Business License details, all entities, State of Alaska (SOA) Division of Corporations, Business and Professional Licensing).
- 2) Bingo South is a gaming establishment offering bingo and pull tabs for customers. Staff duties include operating a cash register, exchanging money, selling pull tabs, operating the bingo caller, delivering food and drink orders from Tri-Grill, and assisting customers with other needs. (Christensen; Alexander).
- 3) Tri-Grill is a full service restaurant offering lunch and dinner from 11:00 a.m. to 1:00 a.m. Sunday through Wednesday, and 11:00 a.m. to 3:00 a.m. on Thursday, Friday, and Saturday. It provides dine-in, carry-out and delivery services. Staff duties include cooking, preparing and serving food, washing dishes and operating a vehicle while delivering orders. Bingo South and

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Tri-Grill are both located at 1041 E. 76th Ave., Anchorage, Alaska 99518. (Business License details, Bingo South, Tri-Grill, SOA Division of Corporations, Business and Professional Licensing; Christensen; Alexander).

- 4) In 2012, Mr. Alexander was before the board as a sole proprietor doing business as Bingo South (AWCB Case No. 700004026). In that case Mr. Alexander was found uninsured from November 26, 2010 to December 22, 2011, a lapse of 391 consecutive calendar days. Mr. Alexander conceded the facts alleged in the Division's petition, and stipulated to a discounted penalty of \$12,690.00. The stipulation became a board order on August 21, 2012. (Stipulation and Order, AWCB Case No. 700004026). It allowed a payment plan, with payments to commence on August 28, 2012. The order informed that failure to make a single timely payment brought the entire unpaid portion of the penalty immediately due and owing. Mr. Alexander made no payments toward satisfying the stipulated penalty, and was declared in default by the Division Director. (Notice/Declaration of Default, June 26, 2013). After receiving the Notice of Default, Mr. Alexander began making payments on the penalty. At the time of hearing in the instant case, \$4,140.00 of the 2012 penalty remained unpaid. (Payment history, AWCB Case No. 700004026).
- 5) The insurance policy Mr. Alexander obtained following the 2010-2011 lapse, was in his name as a sole proprietor, doing business as two entities, Bingo South and Alexander's Painting. The coverage was for a period of one year, until December 22, 2012, and carried an estimated annual premium of \$6,149.00. (Alaska National Insurance Co. (ANIC) Policy No. 11LWW93600). The policy did not initially include Tri-Grill, which was not a licensed business until June 6, 2012. (*Id.*; Business License details, SOA Division of Corporations, Business and Professional Licensing).
- 6) During the policy period cancellation notices for non-payment of premiums, or for failure to comply with audit requirements, were mailed to Mr. Alexander on three occasions: March 27, 2012, June 13, 2012 and August 30, 2012. Reinstatement of the policy without lapse followed each cancellation notice. (Proof of Coverage Inquiry, NCCI, ANIC Policy No. 11LWW93600).
- 7) On October 31, 2012, Alaska National wrote Mr. Alexander notifying him the policy would expire on December 22, 2012 and would not be renewed unless the required premium deposit was received by December 21, 2012. (Letter containing "Important Renewal Information," October 31, 2012)

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- 8) On December 10, 2012, Alaska National wrote Mr. Alexander requesting he complete an enclosed audit form in order for the insurer to calculate the final premium for the December 22, 2011 to December 22, 2012 policy term. The letter cautioned “Non-compliance with this final audit request will result in cancellation of current coverage.” (Audit request, December 10, 2012).
- 9) On December 13, 2012, Alaska National sent Mr. Alexander a further request. It notified him it had received a copy of the Tri-Grill business license, informed him that in the Assigned Risk Pool in which his coverage was written, all of his businesses were covered unless insurance was provided by another carrier. He was instructed to complete the enclosed ERM-14 form outlining changes in his business operations, to sign and return the form by December 20, 2012, or risk cancellation. (Second Request, ANIC, December 13, 2012).
- 10) The ERM-14 was not completed. The Alaska National policy expired on December 22, 2012 and was not renewed. (Record; Alexander).
- 11) On September 12, 2013, Mr. Alexander obtained a new insurance policy through Liberty Mutual Insurance Company with an estimated annual premium of \$8,461.00. (Policy No WC5-39S-322565-013, effective September 12, 2013).
- 12) Mr. Alexander was uninsured during the period December 22, 2012 through and including September 11, 2013, a period of 264 calendar days. (NCCI Proof of Coverage; Alexander; calculation).
- 13) During this uninsured period Mr. Alexander operated Bingo South and Tri-Grill using employee labor. He employed 29 people, who worked 13,889.56 hours, or a total of 1,736.2 uninsured employee work days (13,889.56 divided by 8.0 = 1,736.2 uninsured employee work days). (Bingo South/Tri-Grill payroll records; Lapse #1 worksheet; Alexander; 8 AAC 45.176(e)(2)).
- 14) On September 20, 2013, Mr. Alexander, as a sole proprietor, obtained a business license for Fusions Bar & Grill. (Business License details, Fusions Bar & Grill, SOA Division of Corporations, Business and Professional Licensing).
- 15) Fusions Bar & Grill is a night club and restaurant offering a full service bar and dine-in services, located at 720 Gambell Street, Anchorage, Alaska. Staff duties include waiting tables, serving food and drinks, both alcoholic and non-alcoholic, tending bar, cooking and preparing food and washing dishes. Restaurant hours are from 11:00 a.m. to 10:00 p.m. The bar remains open until 3:00 a.m. (*Id.*; Christensen; Alexander).

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- 16) On October 1, 2013, the Division served Mr. Alexander with a Petition for Finding of Failure to Insure under AS 23.30.075, Assessment of Civil Penalty under AS 23.30.080(f) and 8 AAC 45.176, and a Discovery Demand. It sought numerous items pertaining to Mr. Alexander's use of employee labor at Bingo South, Tri-Grill and Alexander's Painting, including but not limited to time cards, payroll summaries, work schedule calendars, contracts of hire, 1099 forms for purported independent contractors, income tax returns for 2010 – 2012, and profit and loss statements and balance sheets for all years including 2013 to date. Discovery was due on November 1, 2013. (Petition, Discovery Demand, Return of Service).
- 17) Mr. Alexander did not provide the discoverable items within the allotted 30 day time frame. (Christensen; Alexander).
- 18) On November 27, 2013, Fusions Bar & Grill opened its doors for business. (Business License details, Fusions Bar & Grill, SOA Division of Corporations, Business and Professional Licensing; Alexander, Letter, August 13, 2014).
- 19) At 12:01 a.m., December 20, 2013, the Liberty Mutual policy obtained in September was cancelled for non-payment of premium. (Notice of Cancellation, Policy No WC5-39S-322565-013, 11/25/2013).
- 20) At a prehearing conference on January 28, 2014, Mr. Alexander was ordered to provide the discoverable documents contained in the Division's October 1, 2013 discovery demand no later than February 28, 2014. (Prehearing conference summary, served February 15, 2014).
- 21) On February 11, 2014, Mr. Alexander converted his business interest in Fusions Bar & Grill from a sole proprietorship to a partnership with Han Young Cho. Mr. Cho owns the building at 720 Gambell Street, in which the business operates. Mr. Alexander is in charge of the day to day operations of the business. (Business License details, Fusions Bar & Grill, SOA Division of Corporations, Business and Professional Licensing; Alexander; Letter, August 13, 2014)
- 22) On February 27, 2014, Mr. Alexander provided partial discovery. (Christensen; Alexander).
- 23) On March 4 and 5, 2014, the Division served both Mr. Alexander and Mr. Cho with an Amended Petition for Finding of Failure to Insure and Assessment of Civil Penalty, and Discovery Demand. The Amended Petition added S Lounge Bar & Grill and Fusions Bar & Grill as alleged uninsured entities, and added to the charges the further lapse in coverage which began on December 20, 2013. (Amended Petition, Discovery demand; Return of service receipt).

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- 24) On March 19, 2014, Mr. Alexander obtained new insurance coverage through Liberty Mutual Insurance Corporation, policy #WC529S322565024. The policy included Bingo South, Tri-Grill and Fusions, and carried a total estimated annual premium cost of \$23,055.00. (Policy #WC529S322565024).
- 25) Mr. Alexander was uninsured during the period December 20, 2013 through and including March 18, 2014, a period of 89 calendar days. (NCCI Proof of Coverage; Alexander; calculation).
- 26) During this uninsured period Mr. Alexander continued operating Bingo South and Tri-Grill using employee labor. For these two entities he employed 20 people, who worked a total of 5,085.72 hours, for a total of 635.7 uninsured employee work days (5,085.72 divided by 8.0 = 635.7 uninsured employee work days). (Bingo South/Tri-Grill payroll records; Lapse #2 worksheet; Alexander; 8 AAC 45.176(e)(2)).
- 27) On May 3, 2014, the Liberty Mutual policy was cancelled for failure to comply with the insurer's auditing department requests. (Letter from Valerie Hanks to Alexander, April 8, 2014).
- 28) On May 28, 2014, Mr. Alexander obtained another policy of insurance through Liberty Mutual, policy #WC5-39S322565034. (Liberty Mutual, policy #WC5-39S322565034).
- 29) Mr. Alexander was uninsured during the period May 3, 2014 through and including May 27, 2014, a period of 25 calendar days. (Calculation).
- 30) During this uninsured period Mr. Alexander continued operating Bingo South and Tri-Grill using employee labor. For these entities during this period he employed 17 people, who worked a total of 175 uninsured employee work days (Bingo South/Tri-Grill payroll records; Lapse #3 worksheet; Alexander).
- 31) On June 19, 2014, the Division filed its Second Amended Petition and amended discovery demand, adding the third lapse period and seeking additional discovery and a further penalty. (Amended Petition, Amended Discovery Demand, Affidavit of Service and receipt).
- 32) At a June 19, 2014, prehearing conference, the board designee renewed the order for Mr. Alexander to produce all of the information requested by the Division for all lapse periods no later than July 21, 2014. A hearing on the petition, as amended, was scheduled for September 17, 2014. (Prehearing conference summary, dated June 23, 2014).

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- 33) On July 25, 2014, Mr. Alexander provided partial discovery. Tri-Grill and Fusions Bar & Grill information was not provided. (Christensen; Alexander).
- 34) On August 4, 2013, the Division served Mr. Alexander with a subpoena duces tecum requiring production no later than August 15, 2014. (Subpoena Duces Tecum, Affidavit of Personal Service, August 4, 2013).
- 35) On August 13, 2014, Mr. Alexander responded to the subpoena. (Letter, August 13, 2014).
- 36) Mr. Alexander identified three additional people other than himself who worked at Fusions during the uninsured periods: “RP,” who worked two hours on Friday and Saturday nights, for a total of four hours per week; Mr. Alexander’s wife, Serena Alexander, who he identified as an “owner” for whom time cards were not kept; and “SC, who he identified as Fusions’ former owner whose “financial compensation was negotiated in the business price,” and no information concerning hours worked provided (Letter, August 13, 2014; Lapse period worksheets).
- 37) During the period Fusions operated as an uninsured sole proprietorship, from December 20, 2013 through and including February 10, 2014, RP worked 16 uninsured employee work days. Uninsured employee work days attributable to Serena Alexander and SC’s employment cannot be calculated due to Mr. Alexander’s failure to supply sufficient information concerning their work hours. (Letter, August 13, 2014; Lapse period worksheets; calculation).
- 38) Beginning February 11, 2014, when Fusions began operating as a partnership, until it was again insured for workers’ compensation liability on March 19, 2014, RP worked 10 uninsured employee work days. Uninsured employee work days attributable to Serena Alexander and SC’s employment cannot be calculated due to Mr. Alexander’s and Mr. Cho’s failure to supply sufficient information concerning their work hours. (*Id.*).
- 39) During the uninsured period May 3, 2014 through May 27, 2014, RP worked seven (7) uninsured employee work days. Uninsured employee work days attributable to Serena Alexander’s employment cannot be calculated due to Mr. Alexander’s failure to supply sufficient information concerning her work hours. (*Id.*).
- 40) Mr. Alexander also identified two salaried employees of Bingo South, Tri-Grill and Fusions, “AK and “JR-R,” who were employed full time, five days per week, during the uninsured partnership period May 3, 2014 through May 27, 2014, who together worked 38 uninsured employee work days. Uninsured hours worked by these individuals for Bingo South, Tri-Grill

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and Fusions operating as sole proprietorship are included in the total uninsured employee work days calculated above for the sole proprietorships. (*Id.* Lapse period worksheets).

- 41) The partnership of Mr. Alexander and Mr. Cho, doing business as Fusions Bar & Grill, utilized employee labor while uninsured no less than 55 uninsured employee work days. (Findings of Fact 39, 40).
- 42) Neither Mr. Alexander as a sole proprietor, nor Mr. Alexander and Mr. Cho, as partners, are required to include themselves as “employees” under the business’ workers’ compensation policy. Mrs. Alexander and “SC” are not listed as among the business partners or owners and are thus not exempt from workers’ compensation coverage. (Business License details, Fusions Bar & Grill, Division of Corporations, Business and Professional Licensing; AS 23.30.239).
- 43) S Lounge Bar & Grill never operated as a going concern. (Letter, August 13, 2014).
- 44) There is no evidence Alexander’s Painting used employee labor during any of the time periods examined here. (Record; observation).
- 45) However, in 2006, while doing business as Alexander’s Painting, at least two injuries were reported to Mr. Alexander’s employees, one involving time loss for a shoulder injury, and one a fatality. Mr. Alexander was insured for workplace injuries when these injuries occurred. (AWCB ICERS database, AWCB Case Nos. 200612668, 200618206).
- 46) Mr. Alexander accepted sole responsibility for any civil penalty assessed against Fusions Bar & Grill, whether operating as a sole proprietorship or partnership. (Alexander).
- 47) Mr. Alexander testified he would be capable of affording a monthly penalty payment of \$300.00, as this is in the neighborhood of the monthly amount he agreed to pay for his earlier violation. (Alexander).
- 48) Mr. Alexander did not testify he would be incapable of affording a monthly penalty payment greater than \$300.00, nor did he indicate a greater amount would jeopardize either his sole proprietorships or the partnership. The evidence demonstrates Mr. Alexander is capable of affording a monthly penalty payment greater than \$300.00. (Judgment).
- 49) Bingo South is a cash business, reporting gross receipts of \$7,485,200 in 2012 in “Bingo Sales” and “Pull Tab Sales,” and similar amounts in 2013. (Robert Alexander, Schedule C, Bingo South, 2012; Bingo South Profit and Loss Statement, 2013).
- 50) Despite substantial gross income, the business reported net income to Mr. Alexander for 2012 of only \$230,241.57. (Bingo South Profit and Loss Statement, 2012). While this income alone

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reflects an ability to pay a monthly penalty payment greater than \$300 per month, the net income reported was calculated after significant and suspect deductions, not only in 2012, but evident also in the 2011 and 2013 Profit and Loss Statements (P & L) for Bingo South. For example, Bingo South moved from Brayton Drive to 1041 E. 76th Avenue, Anchorage, Alaska in 2011. The 2011 P & L contains a line item for “moving costs” of \$65,585.07, not necessarily unreasonable given the business moved its physical location in 2011. Yet, although Bingo South has remained at the E. 76th Avenue address since the 2011 move, its P & Ls for 2012 and 2013 continue to report “Moving Costs” of \$92,036.21 and \$73,118.44, respectively. When questioned about this inconsistency Mr. Alexander offered an elusive account of these entries as litigation costs connected with capital construction disguised as “Moving Costs.” While “Telephone Expenses” in 2011 were a reasonable \$1,075.74, in 2012 and 2013 Mr. Alexander’s “Telephone Expenses” line item unaccountably mushroomed to \$16,984.49 and \$13,401.31. Facility rents for 2012 and 2013 were listed as \$234,350.00 and \$261,200.00, respectively, which Mr. Alexander insisted were supported by signed lease agreements. When asked to provide copies of the 2012 and 2013 leases, however, he instead filed unsigned drafts of purported leases proposed for 2014 – 2017. Furthermore, in addition to the facility rent listed at \$234,350.00 and \$261,200.00, the P & Ls contain line items for “Other Facility Costs” of \$85,920.47 and \$91,465.37, which Mr. Alexander could not explain. (P & Ls, Bingo South, 2011-2013; Alexander; Leases).

- 51) Concerning assets potentially available to satisfy a civil penalty, Mr. Alexander admitted he owned a Dodge Viper and a CXT International, the latter he was observed driving when he departed the hearing, but claimed he borrowed \$50,000 cash from an individual named “Abdul,” whose last name he did not know, using the vehicles as collateral. He then produced a July 1, 2014, no interest, Promissory Note, with a six month term, showing an indebtedness to “Abdul Konhuji” for \$130,000 with the vehicles as collateral (not the \$50,000 to which he testified), and the registrations for the two vehicles issued to Mr. Konhuji. He provided no explanation for the discrepancy in the amount of the purported collateral for the vehicles. (Alexander; observation; Promissory Note, vehicle registrations).
- 52) Concerning real property in which he has an interest, Mr. Alexander testified he quitclaimed the home in which he and his family live in to his mother, who he admitted does not also live in the house. He conceded he and his wife acquired the commercial property at 2037 E. 5th Avenue,

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Anchorage this year, which they purchased from the Municipality of Anchorage for back taxes and own “free and clear,” but the property is in his wife’s name only. Mr. Alexander testified the only property in his name is a residential vacant lot in East Anchorage. (Alexander).

53) Mr. Alexander hinted, without elaboration, he has an interest in a new business which is not yet operational. (Alexander).

54) Mr. Alexander’s intimation he is both cash and property poor is not credible. (Judgment).

55) Mr. Alexander’s explanation for his multiple lapses in workers’ compensation coverage, that he wears himself thin with his businesses and has only recently been able to afford to hire someone to handle some details he cannot make time for, is both unsympathetic and unbelievable given the size of his business’ cash receipts, the number of employees, the size of his payroll, and his burgeoning business interests. (Judgment).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
...

The Alaska Workers’ Compensation Board (board) may base its decisions 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). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009).

AS 23.30.060. Election of direct payment presumed.

(a) An employer is conclusively presumed to have elected to pay compensation directly to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this chapter, until notice in writing of insurance, stating the name and address of the insurance company and the period of insurance, is given to the employee.

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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 . . . or shall furnish the board satisfactory proof of the Employer's financial ability to pay directly the compensation provided for. . . .

AS 23.30.080. Employer's failure to insure.

(a) If an employer fails to comply with AS 23.30.075. . . .

...

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board may issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides the 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.

....

(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 \$1,000.00 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. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer failed to insure or provide security as 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. The director shall file a certified copy of the penalty order and declaration of default with the clerk of the superior court. The court shall, upon the filing of the copy of the order and declaration, enter judgment for the amount declared in default if it is in accordance with law. Anytime after a declaration of default, the attorney general shall, when requested to do so by the director, take appropriate action to ensure collection of the defaulted payment. Review of the judgment may be had as provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the judgment may be had by writ of execution.

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The severity of AS 23.30.080(f) is a policy statement: failure to insure for workers' compensation liability will not be tolerated in Alaska. A penalty's primary goal is not to be unreasonably punitive, but rather to bring an employer into compliance, deter future lapses, ensure the continued employment of the business' employees in a safe work environment, and satisfy the community's interest in fairly penalizing an offender. *Ivan Moore d/b/a Ivan Moore Research v. State of Alaska, Division of Workers' Compensation*, AWCAC Decision No. 092 (November 17, 2008); referencing *Alaska R&C Communications, LLC v. State of Alaska, Division of Workers' Compensation*, AWCAC Decision No. 088 (September 16, 2008). A penalty is not intended to destroy a business or reduce employment (*Alaska R&C* at 12). In assessing a civil penalty, consideration is given to the duration of the insurance lapse, the scope and severity of the risk associated with the offending employer's conduct, the culpability of the employer's conduct, the impact on the community and employees, and the employer's ability to pay (*id.* at 22-27).

For lapses prior to February 28, 2010, the effective date of 8 AAC 45.176, a wide range of penalties, from \$0 to \$1,000 per uninsured employee work day, have been assessed based on specific circumstances. *See, e.g., In re Homer Senior Citizens, Inc.*, AWCBC Decision No. 07-0334 (November 6, 2007) (no penalty); *In re Casa Grande, Inc. and Francisco Barajas*, AWCBC Decision No. 07-0288 (September 21, 2007) (\$1,000 per employee per day with part suspended). For lapses on or after February 28, 2010, 8 AAC 45.176 established minimum and maximum penalty benchmarks, based primarily on enumerated aggravating factors.

Ordinarily, provisions providing penalties against employers will be strictly construed. *Petty v. Mayor, et al., of College Park*, 11 S.E.2d 246 (Georgia 1940). However the board does have the authority to suspend part of a penalty in light of mitigating circumstances. *Miller's Market v. State of Alaska*, AWCAC Decision No. 161 (May 14, 2012) found penalty suspension was not an abuse of discretion when it stemmed from reluctance to jeopardize the continued viability of the employer's business.

AS 23.30.085. Duty of employer to file evidence of compliance.

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of compliance with the insurance provisions of this chapter with the division, in the form prescribed by the director. The employer shall also give evidence of compliance within 10 days after the termination of the employer's insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the board of the employer's financial ability to pay compensation directly without insurance.

(b) If an employer fails, refuses, or neglects to comply with the provision of this section, the employer shall be subject to the penalties provided in AS 23.30.070 for failure to report accidents; but nothing in this section may be construed to affect the rights conferred upon an injured employee or the employee's beneficiaries under this chapter.

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, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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:

(1) if an employer has an inadvertent lapse in coverage, the civil penalty assessed under AS 23.30.080(f) for the employer's violation of AS 23.30.075 may be no more than the prorated premium the employer would have paid had the employer been in compliance with AS 23.30.075; the division shall consider a lapse in coverage of not more than 30 days to be inadvertent if the employer has changed carriers, ownership of the employer has changed, the form of the business entity of the employer has changed, the individual responsible for obtaining workers' compensation coverage for the employer has changed, or the board determines an unusual extenuating circumstance to qualify as an inadvertent lapse;

(2) if an employer has not previously violated AS 23.30.075, and is found to have no aggravating factors, and agrees to a stipulation of facts and executes a confession of judgment without action, without a board hearing, the employer will be assessed a civil penalty of two times the premium the employer would have paid had the employer complied with AS 23.30.075;

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(3) if an employer has not previously violated AS 23.30.075, and is found to have no more than three aggravating factors, the employer will be assessed a civil penalty of no less than \$10 and no more than \$50 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 (2) of this subsection;

(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;

(5) if an employer is found to have no fewer than seven and no more than 10 aggravating factors, the employer will be assessed a civil penalty of no less than \$500 and no more than \$999 per uninsured employee workday; however, the civil penalty may not be less than four 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 (4) of this subsection;

(6) if an employer is found to have more than 10 aggravating factors, the employer will be assessed a civil penalty of \$1,000 per uninsured employee workday.

(b) A civil penalty assessed under (a) of this section may not exceed the maximum civil penalty allowed under AS 23.30.080(f).

(c) An employer receiving government funding of any form to obtain workers' compensation coverage under AS 23.30.075 that fails to provide that coverage may be assessed the maximum civil penalty under AS 23.30.080(f).

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

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

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

- (2) failure to maintain workers' compensation insurance after previous notification by the division of a lack of coverage;
- (3) a violation of AS 23.30.075 that exceeds 180 calendar days;
- (4) previous violations of AS 23.30.075;
- (5) issuance of a stop order by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);
- (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;
- (8) failure to pay a penalty previously assessed by the board for violations of AS 23.30.075;
- (9) failure to provide compensation or benefits payable under the Act to an uninsured injured employee;
- (10) a history of injuries or deaths sustained by one or more employees while employer was in violation of AS 23.30.075;
- (11) a history of injuries or deaths while the employer was insured under AS 23.30.075;
- (12) failure to appear at a hearing before the board after receiving proper notice under AS 23.30.110;
- (13) cancellation of a workers' compensation insurance policy due to the employer's failure to comply with the carrier's requests or procedures;
- (14) lapses in business practice that would be used by a reasonably diligent business person, including
 - (A) ignoring certified mail;
 - (B) failure to properly supervise employees; and
 - (C) failure to gain a familiarity with laws affecting the use of employee labor;
- (15) receipt of government funding of any form to obtain workers' compensation coverage under AS 23.30.075, and failure to provide that coverage.

(e) In this section,

...

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

(2) “uninsured employee workday” means the total hours of employee labor utilized by the employer while in violation of AS 23.30.075 divided by eight.

AS 32.06.201. **Partnership as entity.** (a) A partnership is an entity distinct from its partners.

...

AS 32.06.306. **Partner’s liability.** (a) . . . all partners are liable jointly and severally for all obligations of the partnership . . .

ANALYSIS

1) Should penalties be assessed against Robert Alexander, sole proprietor, for failure to insure for workers’ compensation liability, and if so, in what amounts?

Robert Alexander concedes he operated Bingo South, Tri-Grill and Fusions Bar & Grill as a sole proprietorship during multiple periods where he engaged employee labor while uninsured for workers’ compensation liability. He concedes he was an uninsured sole proprietor during the periods December 22, 2012 – September 11, 2013, December 20, 2013 – March 18, 2014, and May 3 - 27, 2014, while his employees worked a total of 2,546.9 uninsured employee work days. (Findings of Fact 13, 26, 30). While Mr. Alexander is fortunate no injuries are known to have occurred during these periods, since he is conclusively presumed to have elected to pay compensation directly to injured employees during periods he was uninsured, he remains personally liable for any and all benefits available to injured workers under the Alaska Workers’ Compensation Act (Act) which may be shown to have occurred during these periods he was uninsured. AS 23.30.060.

In addition, the law provides a matrix of possible penalties for an employer’s failure to insure based on the egregiousness of the employer’s conduct measured by the number of aggravating factors existing in a particular case. 8 AAC 45.176. Mr. Alexander’s conduct supports a penalty based on nine aggravating factors:

(1) Failure to obtain workers’ compensation insurance within 10 days after the Division’s notification of a lack of workers’ compensation insurance. 8 AAC 45.176(d)(1). On March 5, 2014, the SIU served Mr. Alexander with an amended petition citing his insurance lapse effective

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

December 20, 2013. Mr. Alexander did not re-insure until March 19, 2014. (Findings of Fact 23-24).

(2) Failure to maintain workers' compensation insurance after previous notification by the Division of a lack of coverage. 8 AAC 45.176(d)(2). Despite notification from the Division through its September 30, 2013 petition and March 3, 2014 amended petition, on May 3, 2014 Mr. Alexander allowed his then current insurance policy to lapse. (Findings of Fact 16, 23, 27).

(3) A violation exceeding 180 calendar days. 8 AAC 45.176(d)(3). Mr. Alexander was uninsured during the period December 22, 2012 through September 11, 2013, a single period of 264 calendar days. He was then uninsured for an additional 89 days from December 20 2013 through March 18, 2014, and another 25 calendar days from May 3, 2014 through May 27, 2014. All tolled, Mr. Alexander was uninsured for 378 calendar days. (Findings of Fact 12, 25, 39).

(4) Previous violations of AS 23.30.075. 8 AAC 45.176(d)(4). On August 14, 2012, Mr. Alexander signed a written stipulation of undisputed facts acknowledging he was operating Bingo South with employee labor while uninsured for workers' compensation liability between November 26, 2010 and December 22, 2011. Despite this lapse, Mr. Alexander allowed his insurance to lapse again just months after the stipulation and order were signed. (Finding of Fact 4, 10).

(5) Failure to comply with the Division's discovery demand within 30 days. 8 AAC 45.176(d)(7). On October 1, 2013, Mr. Alexander was served with the Division's original petition and discovery demand. The discovery demand required Mr. Alexander to respond within 30 days. Mr. Alexander did not respond to the discovery demand until he was ordered to do so at a January 28, 2014 prehearing conference, and then only responded partially. It would take another board designee order and a subpoena duces tecum for the Division to obtain the information sought. (Findings of Fact 16, 17, 20, 22, 32, 33, 34).

(6) Failure to pay a penalty previously assessed by the board for violations of AS 23.30.075. 8 AAC 45.176(d)(8). Mr. Alexander conceded he was uninsured for 391 days in 2010 and 2011, and stipulated to a discounted penalty of \$12,690. The stipulation became a board order on August 21, 2012. Mr. Alexander was permitted to make payments in regular monthly installments,

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

beginning August 28, 2012. Mr. Alexander made no payments toward satisfying the penalty, and was ultimately declared in default. (Finding of Fact 4).

(7) A history of injuries or deaths while the employer was insured under AS 23.30.075. 8 AAC 45.176(d)(11). Doing business as Alexander's Painting, Mr. Alexander had several reported injuries in the past, including time loss injuries and a fatality. By way of mitigation Mr. Alexander contends the fatality involved his brother in law, and an unforeseen workplace injury, a shooting. Rather than mitigate Mr. Alexander's subsequent lapses in coverage, these facts highlight their egregiousness. Mr. Alexander knew firsthand how valued employees can pay the ultimate price in the course of employment, yet he exposed scores of employees, including his own wife, over thousands of employee work days, to workplace injuries for which he was uninsured. No employer expects an employee to be shot and killed on the job, especially when the employee is working as a commercial painter. In November, 2013, however, Mr. Alexander began operating a downtown Anchorage bar, open until 3:00 a.m. seven days a week. The number of grievous and fatal shootings associated with Anchorage bars in the early morning hours is legend. (Kodiak Bar & Grill, September 14, 2014, six shot; Bernie's Bungalow, one shot, May 24, 2014; Platinum Jaxx, one killed, October 28, 2013; Office Lounge, November 10, 2013, three shot; Anchor Pub, two shot, June 15, 2013; J. J.'s Lounge, two killed, two injured, October 10, 2011; Chilkoot Charlie's, one shot, December 10, 2009; Chilkoot Charlie's, two shot, March 14, 2003).

(8) Cancellation of a workers' compensation insurance policy due to the employer's failure to comply with the carrier's requests or procedures. 8 AAC 45.176(d)(13). On December 22, 2012, Mr. Alexander's policy with Alaska National was cancelled for failure to comply with the insurer's audit requirements. Despite three notices of cancellation due to audit failure which Mr. Alexander corrected, he ignored two subsequent notices, and his policy was not renewed. (Findings of Fact 6-10).

(9) Lapses in business practices that would be used by a reasonably diligent business person. 8 AAC 45.176(d)(14). Following a 2012 investigation and penalty, and a second investigation culminating in the Division's September 30, 2013 petition, Employer failed to continue monitoring his workers' compensation policies, allowing multiple lapses in coverage. (Findings of Fact 4, 10, 16, 23, 27). Although Mr. Alexander is commended for finally hiring an office person to pay

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

attention to his workers' compensation insurance requirements, this does not mitigate the seriousness of his multiple offenses when he was fully aware of his responsibility to maintain coverage.

Where, as here, an employer is found to have at least seven and no more than 10 aggravating factors, the employer "will be assessed a civil penalty of no less than \$500 and no more than \$999 per uninsured employee workday." As a sole proprietor doing business as Bingo South, Tri-Grill and Fusions Bar & Grill during the enumerated periods, Mr. Alexander was uninsured for no less than 2,546.9 uninsured employee work days. (Findings of Fact 13, 26, 30, 38). Accordingly, the law requires imposition of a penalty of between \$1,273,450.00 ($2,546.9 \times \$500 = \$1,273,450$) and \$2,544,353.10 ($2,546.9 \times \$999 = \$2,544,353.10$). 8 AAC 45.176(a)(5).

The panel is cognizant that the purpose of a penalty is not to be unreasonably punitive, destroy a business or cause the loss of employment, but to bring the employer into compliance, deter future lapses, ensure the continued employment of the business' employees in a safe work environment, and to satisfy the community's interest in fairly penalizing the offender. All of these goals will be met with a penalty in the low range of \$500.00 per uninsured employee work day. For the sole proprietorship's 2,546.9 uninsured employee work days, the assessed penalty will be \$1,273,450.00 ($2,546.9 \times \$500 = \$1,273,450$), not an insignificant sum despite its comportment with the law's mandatory civil penalty amounts. Given Employer's cooperation at hearing, and to ensure Employer's ability to pay, the sum of \$1,000,000 of the penalty will be conditionally suspended, leaving a penalty due and owing of \$273,450.00.

Given the size of the penalty, a payment plan will be permitted. Within 15 days of the issue date of this decision, Employer will be required to pay as a lump sum an initial payment of \$3,450.00. Mr. Alexander's profit and loss statements and testimony reflect his businesses enjoy enormous gross receipts, with questionable expenses, allowing him to easily make this down payment as well as smaller monthly installment payments, without significant financial hardship. The remaining balance of \$270,000.00 will be payable on the first (1st) day of each month, beginning December 1, 2014, at the rate of \$1,500 per month for 180 months, with the last payment due on November 1, 2029.

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

2) *Should penalties be assessed against the partnership of Robert Alexander and Han Young Cho, doing business as Fusions Bar & Grill, for failure to insure for workers' compensation liability, and if so, in what amounts?*

Mr. Alexander concedes he operated Fusions Bar & Grill in a partnership with Han Young Cho, using employee labor while uninsured for workers' compensation liability, for a minimum of 55 uninsured employee work days. This is an understatement of uninsured employee work days, as Mr. Alexander conceded his wife worked at Fusions, as did Fusions' former owner, neither of whom are listed as business owners or partners and are thus not exempt from coverage. (Alexander; Findings of Fact 39-41).

While Mr. Alexander and Mr. Cho are fortunate no injuries are known to have occurred during the partnership's uninsured periods, February 11, 2014 - March 18, 2014, and May 3 – 27, 2014, they are conclusively presumed to have elected to pay compensation directly to injured employees during periods they were uninsured, and they remain jointly, severally and personally liable for any and all benefits available to injured workers under the Act which may be shown to have occurred during these uninsured periods. AS 23.30.060. While Mr. Alexander's assertion he, not Mr. Cho, is personally responsible for any civil penalties assessed against the partnership may reflect an agreement between he and Mr. Cho, it does not affect the Division's right to pursue collection of any unpaid penalty from either of the partners individually. AS 32.06.306.

A partnership is an entity distinct from its partners. AS 32.06.201. For this reason Mr. Alexander's past personal business failings cannot be attributed to his partnership with Mr. Cho. The partnership's conduct must be examined separately from the pre-partnership conduct of either of its partners. Examining the partnership's conduct against the matrix of possible penalties for failure to insure, four aggravating factors exist:

(1) Failure to obtain workers' compensation insurance within 10 days after the Division's notification of a lack of workers' compensation insurance. 8 AAC 45.176(d)(1). The partnership came into existence on February 11, 2014. On March 4, 2014, the partnership was served with the Division's Amended Petition, notifying it of its current lack of insurance. The partnership did not obtain insurance until March 19, 2014. (Findings of Fact 21, 23-24).

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

(2) Failure to maintain workers' compensation insurance after previous notification by the Division of a lack of coverage. 8 AAC 45.176(d)(2). Despite notification from the Division through SIU's March 3, 2014 amended petition, on May 3, 2014, the partnership allowed its then current insurance policy to lapse. (Findings of Fact 23, 27).

(3) Failure to comply with the Division's discovery demand within 30 days. 8 AAC 45.176(d)(7). On March 4, and 5, 2013, Mr. Alexander and Mr. Cho were served with the Division's amended petition and discovery demand. The discovery demand required response within 30 days. None was provided. On June 19, 2014, the partnership was served with the Division's second amended petition, adding the third lapse period in May, 2014. Not until July 25, 2014 was any further discovery provided, and even then information with respect to the partnership was omitted. Mr. Alexander did not respond to the discovery demand until he was ordered to do so at a January 28, 2014 prehearing conference, and then only responded partially. It would take another board designee order and a subpoena duces tecum for the Division to obtain the information sought. (Findings of Fact 21, 22, 31-34).

(4) Cancellation of a workers' compensation insurance policy due to the employer's failure to comply with the carrier's requests or procedures. 8 AAC 45.176(d)(13). On May 3, 2014, the partnership's policy of insurance with Liberty Mutual was cancelled for failing to comply with the insurer's auditing department requests. (Finding of Fact 27).

Where, as here, 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." The partnership of Mr. Alexander and Mr. Cho, doing business as Fusions Bar & Grill, was uninsured for no less than 55 employee work days. (Findings of Fact 33, 37, 39-41). This is an understatement of uninsured employee work days, as it does not include the days worked by Serena Alexander or by Fusions' former owner. Based on just the 55 uninsured work days, the law requires imposition of a penalty of no less than \$2,805.00 ($55 \times \$51 = \$2,805.00$) and no more than \$27,445.00 ($55 \times \$499 = \$27,445.00$). 8 AAC 45.176(a)(4). The minimum penalty of \$51 per uninsured employee work day is not appropriate where, as here, the uninsured employee work days are necessarily understated due to the employer's failure to provide accurate payroll information. Accordingly, the partnership will be assessed at greater than the minimum allowable penalty, at the

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

rate of \$100 per uninsured employee workday, for a total civil penalty of \$5,500.00. This is not considered so great a sum that the partners will require a payment plan. Mr. Cho owns the real property at which the business operates in downtown Anchorage. Mr. Alexander has substantial gross receipts from Bingo South.

CONCLUSIONS OF LAW

Mr. Alexander will be assessed a civil penalty of \$1,273,450 with \$1,000,000 conditionally suspended as more fully set forth in the order below. A payment plan will be permitted.

The partnership of Mr. Alexander and Mr. Cho, doing business as Fusions Bar & Grill, will be assessed a civil penalty of \$5,500.

ORDER

- 1) The division's June 19, 2014 amended petition is granted.
- 2) At any time ROBERT ALEXANDER, sole proprietor, doing business as Bingo South, Tri-Grill, Fusions Bar & Grill or any other business, has employees, he shall maintain workers' compensation insurance coverage in accord with AS 23.30.075, and shall file evidence of compliance in accord with AS 23.30.085.
- 3) At any time partners ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill or any other business, they shall maintain workers' compensation insurance coverage in accord with AS 23.30.075, and shall file evidence of compliance in accord with AS 23.30.085.
- 4) Pursuant to AS 23.30.060(a), ROBERT ALEXANDER, sole proprietor, doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, is personally, jointly, severally and directly liable for any and all benefits payable under the Act for compensable injuries to employees during the uninsured periods.
- 5) Pursuant to AS 23.30.060(a), ROBERT ALEXANDER and HAN YOUNG CHO, partners, doing business as Fusions Bar & Grill, are personally, jointly, severally and directly liable for any and all benefits payable under the Act for compensable injuries to employees during the partnership's uninsured periods.

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

6) Pursuant to AS 23.30.080(f), ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, is assessed a civil penalty of \$1,273,450, of which \$1,000,000 is conditionally suspended. ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions, must timely pay \$273,450 in the matter set forth below.

7) A payment plan is ordered.

8) **ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, shall pay an initial payment of THREE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$3,450.00) within FIFTEEN (15) days of the issue date of this decision in accord with AS 23.30.080(g). Thereafter, on the 1st day of each and every month beginning December 1, 2014, ROBERT ALEXANDER, sole proprietor, doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, shall make monthly payments in the sum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) for 180 MONTHS until the total civil penalty of \$273,450.00 is paid in full, with the last payment due on November 1, 2029.**

9) ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions, shall make all payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, **shall make checks payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCBC Case Number 700004468, and AWCBC Decision Number 14-0137.** If ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, fails to make timely civil penalty payments as ordered in this decision, the entire remaining portion of the full \$1,273,450.00 full assessed penalty shall immediately be due and owing and the Director of the Division of Workers' Compensation may declare the entire, assessed civil penalty in default and seek collection. Pending full, civil penalty payment under AS 23.30.080(f) in accord with this Decision and Order, jurisdiction is maintained.

10) The Division is directed to monitor ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions Bar & Grill, or any entity in which Mr. Alexander holds an ownership interest, for fifteen [15] years from this decision's issue date to ensure his continued compliance with the Act's insurance requirements.

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

11) The division's Collections Officer is ordered to prepare a proposed Liability Discharge Order within 30 days of ROBERT ALEXANDER, sole proprietor, and doing business as Bingo South, Tri-Grill, and Fusions, full, 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.

12) **PARTNERS, ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, shall pay a civil penalty of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00) within TWENTY (20) days of the issue date of this decision in accord with AS 23.30.080(g).**

13) PARTNERS ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, shall make payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. **PARTNERS ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, shall make checks payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCB Case Number 700004468, and AWCB Decision Number 14-0137.** If PARTNERS ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, fail to timely pay the assessed civil penalty as ordered in this decision, the Director of the Division of Workers' Compensation may declare the entire, assessed civil penalty in default and seek collection. Pending full, civil penalty payment under AS 23.30.080(f) in accord with this Decision and Order, jurisdiction is maintained.

14) The Division is directed to monitor PARTNERS ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, for three (3) years from this decision's issue date to ensure continued compliance with the Act's insurance requirements.

15) The Division's Collections Officer is ordered to prepare a proposed Liability Discharge Order within 30 days of PARTNERS ROBERT ALEXANDER and HAN YOUNG CHO, doing business as Fusions Bar & Grill, full, 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.

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

Dated in Anchorage, Alaska on October 10, 2014.



ALASKA WORKERS' COMPENSATION BOARD

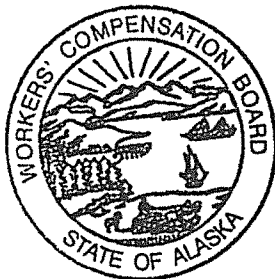
Linda M. Cerro
Linda M. Cerro, Designated Chair

/s/ Amy STEELE
Amy Steele, Member

/s/ RICK TRAINI
Rick Traini, Member

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

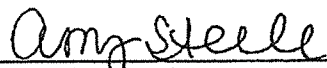
Dated in Anchorage, Alaska on October 10, 2014.



ALASKA WORKERS' COMPENSATION BOARD



Linda M. Cerro, Designated Chair



Amy Steele, Member

Rick Traini, Member

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL. *et al.*

Dated in Anchorage, Alaska on October 10, 2014.

ALASKA WORKERS' COMPENSATION BOARD



Linda M. Cerro, Designated Chair

Amy Steele, Member

Rick Traini

Rick Traini, Member

In re ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*

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

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.

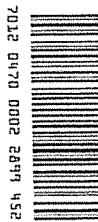
CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of ROBERT ALEXANDER dba BINGO SOUTH, TRI-GRILL, FUSIONS BAR & GRILL, *et al.*; Employer / respondent; Case No. 700004468; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served upon the parties on October 10, 2014.



Pamela Murray, Office Assistant

State of Alaska
Dept. of Labor & Workforce Development
Division of Workers' Compensation
3301 Empire St., Ste. 304
Anchorage, AK 99503



7012 0470 0002 2099 4524

RETURN RECEIPT REQUESTED

Robert Alexander
2234 Stockdale Cir.
Anchorage, AK 99515

State of Alaska
Dept. of Labor & Workforce Development
Division of Workers' Compensation
3301 Empire St., Ste. 304
Anchorage, AK 99503



7012 0470 0002 2099 4537

RETURN RECEIPT REQUESTED

Bingo South DBA
1041 E. 76th Ave
Anchorage, AK 99518

State of Alaska
Dept. of Labor & Workforce Development
Division of Workers' Compensation
3301 Empire St., Ste. 304
Anchorage, AK 99503



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