

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
WEST PALM BEACH DISTRICT OFFICE

Robert Abramovitz,  
Employee/Claimant,

OJCC Case No. 15-028567TMB

vs.

Accident date: 6/1/2015

O&C MASONRY, Oceanside Masonry,  
Employer,

Judge: Stephen L. Rosen

AIG Property Casualty, Zurich American  
Insurance Company, and Broadspire,  
Carrier/Servicing Agent.

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**EVIDENTIARY ORDER ON OCEANSIDE MASONRY, INC.'S MOTION TO  
VACATE/SET ASIDE ORDER STRIKING DEFENSES OF EMPLOYER**

**This Cause** came on for hearing before the undersigned Judge of Compensation Claims on August 15, 2016. The subject of the hearing was the employer, Oceanside Masonry, Inc.'s motion to vacate/set aside order striking affirmative defenses. Bradley R. Weiss, Esq. was present on behalf of Oceanside Masonry, Inc., Paul L. Luger Esq. was present on behalf of Frank Winston Crum Insurance, and Jarrod Ohr, Esq. was present on behalf of the Claimant. James C. Price, Esq. was noticed on behalf of O and C Masonry, Inc. and AIG.

This case was heard through the video teleconferencing system with the parties in Fort Lauderdale and the undersigned in St. Petersburg.

**Judge's Exhibits:**

1. Mediation conference report filed May 16, 2016.
2. Order to show cause for failure to attend mediation conference for Oceanside Masonry, Inc. entered May 18, 2016.

3. Order striking defenses of employer Oceanside Masonry, Inc. entered June 3, 2016.
4. Order changing venue from Ft. Lauderdale district to West Palm Beach district entered August 1, 2016.
5. Outgoing correspondence regarding motion hearing filed August 4, 2016.
6. Outgoing correspondence filed August 11, 2016.

**Claimant's Exhibit:**

1. Petition for benefits filed March 29, 2016, with attachments.

**Employer Oceanside Masonry, Inc. Exhibits:**

1. Response to petition for benefits filed April 8, 2016.
2. Motion to vacate/set aside the order striking defenses of employer filed July 19, 2016, with attachments.
3. Notice of hearing on motion to vacate/set aside order striking defenses filed July 28, 2016.

After hearing arguments of the parties and otherwise being fully apprised of the facts and applicable law herein, I find that:

1. I have jurisdiction of the subject matter and the parties for this motion.
2. The claimant, Robert Abramovitz, initially filed a petition on December 8, 2015. This petition was amended on March 23, 2016 and dismissed on March 28, 2016.
3. A petition, on behalf of the claimant, was again filed on March 29, 2016 and the parties agree that Oceanside Masonry, Inc. was not initially named as a party. Mediation was scheduled for May 16, 2016 through notice entered March 24, 2016. Again, the parties do not dispute that Oceanside Masonry, Inc. was not noticed for this mediation.

4. The facts reveal that Oceanside was first notified of a petition for benefits on March 24, 2016 through another respondent, Frank Crum, Inc. Frank Crum handles Oceanside's payroll in workers' compensation coverage. Frank Crum requested information from Oceanside and Oceanside provided what information it had. It is undisputed that Oceanside believed that the claim was being handled by Frank Crum as any workers' compensation claim would be pursuant to the terms of its policy of workers' compensation insurance through Frank Crum.

5. Oceanside failed to attend the mediation on May 17, 2016 and received an order to show cause within 10 days from the date of that order as to why sanctions should not be imposed or defenses stricken. However, due to a mix-up in communications with Oceanside's office manager being out of town, the parties agree that Oceanside did not receive the order to show cause until May 27, 2016.

6. Because of Oceanside's lack of response, an order striking its defenses was entered on June 3, 2016.

7. Venue was changed from Ft. Lauderdale to West Palm Beach by order entered August 2, 2016.

8. On or about July 8, 2016 Oceanside first became aware that Frank Crum was not representing its interest, nor had Frank Crum filed a notice of appearance through counsel on behalf of Oceanside. Oceanside retained individual counsel who promptly filed a notice of appearance and motion to vacate/set aside the order striking defenses of Oceanside on July 19, 2016. This hearing ensued after due notice to the parties.

9. There is no doubt that the order striking defenses became final 30 days after it was entered on June 3, 2016.

10. F. S. 440.28 deals with modification of prior orders entered by a Judge of Compensation Claims. Under that statute, although the parties have not specifically moved for modification of the order entered June 3, 2016 striking the defenses of Oceanside, Inc. a JCC, on his or her own initiative, may set aside an order that has become final if it is based on a mistake of fact. In the

instant case, the facts are undisputed that Oceanside was under the mistaken belief that it had representation through Frank Crum and that all legal proceedings would be attended by a representative of Frank Crum. There are no allegations by any of the parties other than those which are laid out in the motion to vacate/set aside the order striking defenses.

11. Therefore, I find that Oceanside Masonry, Inc. was laboring under a mistake in fact that it had representation for petitions filed on behalf of the claimant and therefore did not respond on its own. I find the motion to vacate/set aside the final order striking the employer's defenses to be well taken.

**WHEREFORE, it is ordered** that the order striking the defenses of Oceanside Masonry, Inc. is hereby modified and shall be considered null and void. Oceanside masonry, Inc. shall have its defenses reinstated. The parties are ordered to reschedule the state mediation in West Palm Beach and if the mediation is unsuccessful, the party shall complete the pretrial stipulation forms and the final hearing shall be rescheduled no later than December 15, 2016.

2. The final hearings currently scheduled for October 5, 2016 and September 19, 2016 are **CONTINUED**. All pending petitions are consolidated and shall be mediated at the newly scheduled mediation date and, if the mediation is unsuccessful, the petitions pending shall be heard at the final hearing scheduled no later than December 15, 2016.

DONE AND ORDERED this 16th day of August, 2016, in St. Petersburg, Pinellas County, Florida.



**Stephen L  
Rosen**

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