IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

DOLLAR GENERAL CORPORATION, Petitioner,	)	
VS.	)	NO. 09-145-III
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, WORKER'S COMPENSATION DIVISION, Respondent.	)	

MEMORANDUM AND ORDER

Pursuant to Tennessee Code Annotated section 4-5-322 of the Uniform Administrative Procedures Act, petitioner Dollar General Corporation filed this lawsuit to appeal the final order of the Tennessee Department of Labor and Workforce Development, Workers' Compensation Division. The Department's order assessed a 25% penalty against the petitioner for nonpayment of temporary total disability benefits, under the authority of Tennessee Code Annotated section 50-6-205(b)(3)(A).

On January 14, 2010, this Court conducted oral argument on the appeal and took the matter under advisement.

After considering the record and argument of counsel, the Court concludes that the final order of the Department must be reversed under section 4-5-322(h)(1) and (5) as the decision violates statutory provisions, and is unsupported by substantial and material

evidence. Specifically, the decision below failed to apply controlling case law interpreting the penalty statute, section 50-6-205(b)(3)(A). The decision also violated statutory provisions by failing to comply with the requirements of Tennessee Code Annotated section 4-5-314(c) that a final order state findings of fact for all aspects of the order and state a concise and explicit statement of underlying facts to support the findings. Lastly, the decision is unsupported by substantial and material evidence as the testimony at the contested case hearing of petitioner's witness, Renee Garrett, fairly detracts from the Department's decision to assess a bad faith penalty. Ms. Garrett's testimony establishes that material facts were provided to and reasonably relied upon by the petitioner in denying the claim.

The facts of record and conclusions of law on which the Court bases its decision are as follows.

Facts and Procedural History

On March 21, 2008, Donna Gillette ("claimant") fell in the parking lot of the Dollar General store where she was employed.

Five days later, on March 26, 2008, Dollar General filed the notice, required by the State, documenting that it had denied the claim (Notice of Denial, Record ("R.") at 41).

On April 25, 2008, the claimant filed a Request for Assistance (R. at 35) with the Department of Labor and Workforce Development asserting that Dollar General had wrongfully denied her worker's compensation benefits.

The Request for Assistance was assigned to Suzanne Buck, a worker's compensation specialist. Based on papers filed with her by the parties' attorneys, Ms. Buck determined that the claim was compensable. On July 31, 2008, Specialist Buck ordered that the petitioner pay the claimant medical and temporary total disability benefits (R. at 61). In addition to her ruling awarding those benefits, Specialist Buck recommended that the petitioner be assessed a 25% penalty, or $508.01, pursuant to Tennessee Code Annotated section 50-6-205(b)(3)(A), for failing to pay at the outset temporary total disability benefits.

The recommendation for assessment of the 25% penalty was assigned to worker's compensation Specialist J. Edward Blaisdell. He issued his decision on September 4, 2008, assessing the penalty.

The petitioner appealed the penalty and requested a contested case hearing.

The Department issued a Notice of Hearing which stated in the second paragraph that the issue to be decided was why the petitioner should not be subject to monetary penalties for refusing to pay temporary total disability benefits (R. at 23). The Notice also stated that the burden was on the petitioner "to show cause" why it was not subject to the penalty.

On December 18, 2008, the contested case, show cause hearing was conducted.

Tennessee Code Annotated section 4-5-312 explains that a contested case hearing is an evidentiary hearing like a trial *de novo*. Section 4-5-314(c) requires the hearing officer to make findings of fact and conclusions of law. Section 4-5-314(d) requires that the findings of fact be based exclusively on the evidence admitted at the contested case hearing.

Applying the foregoing procedure to the record, the Court sees from the transcript of the contested case hearing that the documentary evidence consists of two exhibits: Exhibit 1, the WCS Benefit Review Oversight Screen (R. at 6), and Exhibit 2, the Checklist for Penalty Referral (R. at 7). Both of these were prepared by Ms. Buck, who entered the order for benefits to be paid and who recommended assessment of the penalty. Although there are many documents contained in the technical record submitted by counsel to the specialists prior to the contested case hearing, these other documents, under the authority of sections 4-5-312 and 314, do not constitute evidence admitted at the contested case hearing and may not be considered by this Court in its review pursuant to section 4-5-322(h).

Thus, the documentary evidence from the contested case hearing for this Court to consider in conducting its review under section 4-5-322(h), especially subsection (5), consists of the two exhibits identified above (R. at 6-7).

For ease of reference, the Court quotes the content of Exhibit 2 to the contested case hearing as the content of that Exhibit is representative of both Exhibits:

> Penalty recommended as Employer/Carrier denied without the benefit of a thorough investigation. Denial was based on incorrect information that Employee was at the store to obtain her paycheck. It was determined Employee is on direct deposit and was at the store to obtain her work schedule as is required by Employer. After correct information was determined, Employer/Carrier continued to deny based on injury not occurring within the course and scope and as a result of the employment. Employer/Carrier also alleged Employee told co-worker she was dizzy due to allergy medication. Employer/Carrier did not obtain medical records to determine any impact of medication prior to denying.

(R. at 7).

In addition to the two exhibits, the other evidence from the contested case hearing consisted of the testimony of two witnesses: Jay Blaisdell, the specialist who assessed the 25% penalty, and Renee Garrett, a Manager at Dollar General, who immediately reported to the petitioner an admission/statement against compensability the claimant made to Ms. Garrett at the time of the fall. Much of Mr. Blaisdell's testimony was excluded by the hearing officer as irrelevant, which exclusion this Court concludes was proper.

For ease of reference, the particular portions of Ms. Garrett's testimony which the Court relies upon for its decision herein are quoted below. This testimony contains the admission/statement against compensation that the claimant made to Manager Garrett at the time of the injury as well as testimony about Dollar General's employee policy on obtaining work schedules:

Q. Would you, please, state your name for the record?

A. Renee Garrett.

MR. BURROW: Approach the witness, Your Honor? Just clean this up.

(Discussion off the record.)

Q. Where were you employed?

A. Dollar General.

Q. All right. How long have you been employed there?

A. Five years.

Q. And I assume, then, since you've been there five years, that you were there and working for Dollar General on March 21, '08.

A. Yes.

Q. And in what capacity were you working at that time?

A. Manager.

* * * *

Q. . . . All right. In performing your job as a manager, did you have occasion to supervise Donna Gillette?

A. Yes.

Q. Were you her supervisor that day?

A. Yes.

Q. Was she on the clock to work that day?

A. No.

Q. Do you recall her coming to the store?

A. Yes.

Q. If you would, please, advise the Court here what happened when she came in the store, what she was there to do and what transpired.

A. She was just out, doing some errands, getting ready —

* * * *

A. She — we both were busy. And she was standing up at our register or in between our registers and had talked about she was not feeling well because she had called a doctor and he put her on some more medicine because of her allergies or sinuses or to that effect. And she — okay.

And then she had made the comment that she really shouldn't be driving, but you know, she had — she was just out and about. And then she made the comment that they were going to go that evening to Red Lobster and then go to Sam's Club, and she had quite a bit of money on her.

Q. Okay.

A. So — and then when she left, we told her, you know, we'd see her later.

Q. Let me interrupt you, if I may.

A. Okay.

Q. From the time she told you that she was dizzy and the doctor — did she say the doctor prescribed her medication or she was taking medication at the doctor's direction? I missed that part.

A. The doctor had told her that instead of taking the one, to go ahead and take the two.

Q. The two antihistamines?

A. Yeah.

Q. And so how long after she told you that did she leave the store?

A. I'd say ten, fifteen seconds after that, because me and the cashier both were busy.

Q. Okay. What happened next?

A. The next thing that happened was a customer come in and said, your employee fell.

Q. All right. Let me interrupt you. How long from the time she left your presence until that person came in? How much time passed there?

A. Maybe five seconds after that.

Q. All right. And what happened next?

A. I stopped what I was doing, my customers understood, and I went out. Donna was laying in the center of a parking spot and had gotten up. She was sitting up by then. There was a nurse there also. And she just kept telling me she was sorry, she was sorry, she knew she shouldn't be out. And that was it.

Q. All right. And based upon the nature of your discussion, what was the state of mind she was talking about there?

A. That she had gotten light headed, because she'd already made the gestures, and she was doing this and —

Q. And for the record, when you say she's doing this, you put a hand up to your head.

A. Right.

Q. All right. And after this occurred, did you fill out any type of form?

A. Yes.

Q. All right.

A. That is the procedure for us.

Q. Okay. And what type of form did you fill out?

A. It is a risk management form that we — concerning if an employee or a customer falls, that this form is completely filled out. And then we call in.

Q. All right. And so if a customer slips on detergent, is this the same form that you fill out?

A. Yes. Yes.

Q. All right. And then subsequently, did you have any conversation with risk management or anybody that talked to you about what had happened?

A. Yes. They had called me back and —

Q. All right. And did you share with that person in risk management the same information that you've just shared with us here?

A. Yes.

Q. And was there any substantive deviation or was it pretty much just like you told us?

A. It's just about — yeah, it's —

* * * *

Q. . . . Okay. But there's a — there's no question, is there, but what Ms. Gillette did get hurt there that day, right?

A. Out in the parking lot, yes.

Q. Okay. And that she was there — I think you testified that she came in to check her schedule and/or get a paycheck stub.

A. Yes. But it is not mandatory for the employees to come in to get their schedule —

Q. Right.

A. — if they are to where they can call and —

Q. Right. Well, let me ask you that along that line. In your statement, I was reading it, you stated in response to a question, it is their responsibility to — they can either call and get their schedule or stop by if they are in the vicinity.

A. Right.

Q. Okay. So either/or, right?

A. Either/or, right.

Q. But there's no question, you don't make any decisions about —

A. No.

Q. — accepting or denying any work comp benefits?

A. No, sir.

(Transcript ("Tr.") at 42-43; 48-51; 57-58).

After Dollar General completed its proof, a motion was made for a directed verdict. The motion was granted, and the penalty was assessed. The final order assessing the penalty was issued on January 5, 2009.

This appeal followed.

Standard of Review and Applicable Law

In reviewing the final order of the administrative agency below, this Court does not sit as a trial court, and it does not consider the record *de novo*. *CF Industries v. Tennessee Public Service Commission*, 599 S.W.2d 536, 540 (Tenn. 1980). The Court's review is limited to the record and the grounds listed in Tennessee Code Annotated section 4-5-322(h)(1)—(5), about which more is discussed *infra* at 16-20.

Other law applicable to this case pertains to the bad faith penalty assessed by the Department. Tennessee Code Annotated section 50-6-205(b)(3)(A) is the statutory source of the penalty and reads as follows:

> In addition to any other penalty provided by law, if an employer, trust or pool or an employer's insurer fails to pay, or untimely pays, temporary disability benefits within twenty (20) days after the employer has knowledge of any disability that would qualify for benefits under this chapter, a workers' compensation specialist shall have the authority to assess against the employer, trust or pool or the employer's insurer a civil penalty in addition to the temporary disability benefits that are due to the employee. The penalty, if assessed, shall be in an amount equal to twenty-five percent (25%) of the temporary disability benefits that were not paid in accordance with this subsection (b). Furthermore, the penalty may be assessed as to all temporary disability benefits that are determined not to be paid in compliance with this subsection (b).

In addition to the above text, courts in Tennessee have interpreted the statute to provide that the penalty may not be imposed if the denial of benefits was made in good faith. *Building Materials Corporation v. Coleman,* 2005 WL 3147658 *4. "Good faith" is a denial of benefits based upon a "reasonable judgment or doubt." *Id.* (citing *Mayes v. Genesco, Inc.*, 510 S.W.2d 882, 885 (Tenn. 1974) (discussing a previous, but similar version of the statute). Bad faith is "akin to fraud or wrongfulness." *Building Materials Corporation v. Coleman,* 2005 WL 3147658 *4 (citing *Hale v. Commercial Union Assurance Cos.*, 637 S.W.2d 865

(Tenn. 1982)). The *Mayes* court also explained that the courts do not favor penalties and that the mere failure to pay does not automatically result in assessment of the penalty:

> The courts, as a general rule, do not favor penalties, and this Court finds that if the defendant did not pay the plaintiff as alleged, and that such failure to pay was in good faith, or based on a reasonable judgment or doubt, then the penalty should not be assessed against the defendant, for we interpret the word "penalty' as used in the Statute to mean just that. The words in the Statute 'should suffer a penalty' to us implies that the failure to pay must be in bad faith on the part of the defendant and we so hold. To rule otherwise would be to automatically attach a six percent penalty in all cases where the defendant did not pay as provided by this Statute, whether in good or bad faith. Thus, the discretion and judgment of defendant employers and/or their insurance carrier, in making an honest intelligent and knowledgeable evaluation of claims such as this, would be hampered if not destroyed, and the Workmen's Compensation Act itself would ultimately be affected.

Id.

Building Materials further explains the role the investigation performed by the employer prior to denying the claim has on the charge of bad faith. In that case an insuror denied a claim based on (1) a videotape of the employee lifting wood slats which (2) contradicted the employee's claims of inability to lift, and (3) a doctor's assessment of the videotape that it surpassed restrictions placed on the claimant. The *Building Materials* Court held that the denial was "unfounded" and made in bad faith because "the events that purportedly explained the denial of this claim did not exist at the time the claim was denied." *Id.* at *5. In other words, the doctor's opinion and the employee's inconsistent statement were made after the denial and, therefore, it was impossible to rely upon them for the denial as these facts did not exist. Significant to the case at bar is that the *Building Materials* Court

emphasized that had the facts existed at the time the claim was denied, a finding of bad faith would not have been warranted. *Id.* "The denial here reaches beyond an honest but mistaken judgment; it represents an unfounded and arbitrary decision made without a full investigation." *Id.* By saying that it had relied upon facts that did not exist at the time of the denial, the insuror's conduct was "akin to fraud or wrongfulness." *Id.*

The final law implicated by this appeal is section 4-5-314(c), mentioned above, that requires a hearing officer to make conclusions of law and findings of fact—the latter to be accompanied by a concise and explicit statement of the underlying facts that support the findings:

> (c) A final order, initial order or decision under § 50-7-304 shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. An initial order or decision shall include a statement of any circumstances under which the initial order or decision may, without further notice, become a final order.

In *CF Indus. v. Tennessee Pub. Serv. Comm'n*, 599 S.W.2d 536 (Tenn. 1980), the Supreme Court instructed that this provision "is a statutory imperative; it 'is not a mere technicality but is an absolute necessity without which judicial review would be impossible." *Id.* at 541. Where the facts are sharply contested and the proof is conflicting, "a detailed

finding of fact dovetailed to the record is a practical and legal imperative." *Id.* The Court of Appeals has also stated that "agency findings should be specific and detailed enough to allow the courts to conduct a meaningful review of the agency's order." *American Assoc. of Retired Persons v. Tennessee Pub. Serv. Comm'n*, 896 S.W.2d 127 (Tenn. Ct. App. 1994) (citing *Levy v. State Bd. of Examiners*, 553 S.W.2d 909 (Tenn. 1977)).

Final Order

For the analysis that ensues, it is helpful to reproduce the Department's final order being reviewed by this Court. The final order is very short, and in pertinent part it reads as follows:

> A timely Petition for a contested case hearing was filed by the Petitioners, and the Show Cause Order was issued by the Commissioner's Designee on October 08, 2008, requiring the Petitioner to appear on December 18, 2008 and show cause why the Penalty assessed against the Petitioners should not be enforced.
>
> When the case was called on for hearing Counsel for Petitioner called two witnesses and thereafter rested whereupon a motion for a directed verdict on the merits was made on behalf of the Respondent. Counsel for Respondent thereupon requested the Commissioner's Designee to deny Petitioner any relief asserting that the Petitioner had failed to carry the burden that the subject penalty had been inappropriately assessed.
>
> The Commissioner's Designee takes **OFFICIAL NOTICE** of the following:
>
> 1. *Tenn. Code Ann.* § 50-6-205(b)(3) provides for a penalty to be assessed against an employer or insuror who fails to pay or pays in an untimely manner Temporary Total Disability benefits in the amount of 25% of the unpaid or untimely paid benefits.

2. The Rules of the Penalty Program of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development place the burden of proof on the Petitioner to show why the Agency Decision that is being challenged should not be upheld. *Penalty Program Rule* 0800-2-13.13

3. Documentary evidence, though it may be hearsay, is admissible if it bears reasonable indicia of reliability, specifically "if it is of a type commonly relief upon by reasonably prudent men in the conduct of their affairs." *Tenn. Code Ann.* § 4-5-313.

4. The claims handling standards set forth in the Tennessee Workers Compensation Statute.

5. The Claims Handling Standards as set forth in the Rules of the Tennessee Department of Labor and Workforce Development and as published by the Tennessee Secretary of State as Rule 0800-4-13, *et seq*. have been in effect since February 28, 1998.

The Commissioner's Designee has considered the pleadings, the statements of counsel for the parties, the documentary evidence offered, the relevant statutes, rules, and regulations, the foregoing items Officially Noticed, and the record in this cause as a whole, from all of which the Commissioner's Designee makes the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW**:

1. The evidence proffered by Petitioner in this cause showed that the employee in this case due was injured in the course and scope of her employment but no benefits were paid until Petitioner was ordered to do so months after the injury. There was no evidence introduced to indicate there had been any material investigation prior to the date the claim was denied. This, without more evidence of some kind, does not in any manner address the appropriateness of the assessment of the subject Penalty.

2. The Petitioner has completely failed to present any evidence as to why the subject penalty should not be upheld even though they have the burden of doing so as noted above.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

The Agency Decision of September 4, 2008 assessing a civil penalty in the amount of $508.01 against the Petitioner is **AFFIRMED**. The Petitioners shall pay the civil penalty directly to the Employee Donna Gillette at her last known address of 14 Valarian Terrace, 79 N Main Street, Crossville, TN 38558, within 15 calendar days from the date of entry of this Order. All other matters are **RESERVED**.

Analysis

The issue before this Court is a narrow one: does the January 5, 2009 final order of the Department require reversal based upon the five grounds stated in Tennessee Code Annotated section 4-5-322(h)(1)-(5). On three bases, this Court concludes, reversal is required.

The first grounds for reversal is section 4-5-322(h)(1)—the decision of the Department was made "in violation of . . . statutory provisions." The statute the final order violates is the penalty statute, section 50-6-205(b)(3). The violation is that the order does not apply the controlling case law (discussed *supra* at 10-13) that:

(1) The courts do not favor assessment of the penalty.
(2) Mere failure to pay is an insufficient basis on which to assess the penalty.
(3) Failure to pay based upon a reasonable doubt constitutes a good faith denial.
(4) A denial based on an investigation that revealed existing facts honestly relied upon does not constitute bad faith if the facts are later determined not to constitute a defense.
(5) Bad faith is akin to fraud or wrongful conduct.

As seen above, from the reproduction of the final order, it does take notice of the statute, "*Tenn. Code Ann.* § 50-6-205(b)(3) provides for a penalty to be assessed against an employer or insuror who fails to pay or pays in an untimely manner Temporary Total Disability Benefits in the amount of 25% of the unpaid or untimely paid benefits." Along with that notice, though, there is no reference to or recitation of the case law. That absence indicates to this Court that the controlling case law was not applied. Additionally, moving down through the body of the order, there is no factual or legal analysis in the Findings of Fact and Conclusions of Law section derived from the case law, such as, for example, whether Ms. Garrett's statements provide a reasonable doubt on the issue of compensability, or conduct by the petitioner in denying the claim that was fraudulent or wrongful. This absence of findings of fact and legal analysis on the good faith issue is conclusive to the Court that the hearing officer did not apply the controlling legal standard found in the case law. As such, the final order violates the applicable law for assessment of the penalty under section 50-6-205(b)(3), and therefore constitutes grounds for reversal under Tennessee Code Annotated section 4-5-322(h)(1).

The next ground for reversal relates back to the failure of the hearing officer to take into account the controlling case law. When the bad faith standard is read into the application of the penalty statute, as required by the case law, and applied to this case, the

testimony of Ms. Garrett in this case fairly detracts from the hearing officer's assessment of a penalty and causes the decision to be unsupported by evidence that is both substantial and material.

It appears from the findings of fact and conclusions of law quoted above that the basis for assessing the penalty below was lack of evidence on the part of the petitioner of an investigation of the claim and lack of evidence that the penalty should not be applied. But, using the bad faith standard, the testimony of Ms. Garrett does constitute such evidence.

That testimony, quoted above *infra* at 5-10, establishes that immediately after the accident occurred, investigative information was provided by Ms. Garrett to Dollar General's insuror (Tr. at 48-51).

As to the materiality of the information imparted by Ms. Garrett in the investigation prior to denial of the claim, the information was certainly material, in several respects. First, there is Ms. Garrett's status. She holds a position of responsibility with Dollar General as a manager. Next, she was the claimant's supervisor. Finally, Ms. Garrett had a direct, personal conversation with the claimant. In addition to Ms. Garrett's status, the content of the information she imparted to Dollar General's insuror was very material. Ms. Garrett related an admission/statement against compensability made by the claimant that (1) she was at the store predominantly on a personal errand to obtain her paycheck stub and incidentally checked her work schedule and (2) right before the claimant fell she was dizzy, lightheaded and should not be out due to a double dose of cold medicine. Both of these statements by the

claimant provide facts to support defenses that the claimant was not within the course and scope of her employment when the fall occurred, and the fall resulted from the non-work related cold medicine.

The legal significance of Ms. Garrett's testimony in terms of the bad-faith statute, is that at the close of the petitioner's proof below the petitioner had established that when it denied the claim it had in its possession evidence from a manager to whom the claimant directly made an admission/statement against compensability. This is significant because, unlike *Building Materials* where the denial was not grounded in existing facts, the denial by the petitioner in this case was. At the conclusion of Ms. Garrett's testimony, there was proof in the record of a basis for a reasonable doubt on the part of the petitioner as to the compensability of the claim, and there was no proof of fraud or wrongful conduct. At most, if at the conclusion of the proof, the hearing officer concluded from trial exhibit 2 (R. at 7) that Ms. Garrett's statement was impeached by the absence of the claimant's dizziness in her medical records, that inconsistency is in the nature of a mistaken judgment by petitioner which is, the case law provides, insufficient to assess the penalty.

For these reasons, the Court reverses the decision below under section 4-5-322(h)(5).

The final ground for reversal comes under section 4-5-322(h)(1) and is based on a violation of section 4-5-314(c). The latter Code section, quoted above in the applicable law section, requires the officer who conducted the contested case hearing to prepare a final

order, stating therein conclusions of law and findings of fact for all aspects of the order. Also, the findings of fact must be accompanied by concise and explicit statements of the underlying facts.

Most respectfully and seeing from the transcript that some of the difficulty below resulted from counsel being confused about the trial *de novo* aspect of the contested case hearing, nevertheless, this Court is compelled to find that the final order does not comply with the requirements of section 4-5-314(c). When the evidence adduced at the contested case hearing, reproduced above, consisting of the testimony of Renee Garrett and the documentary evidence of the WCS screen (R. at 6) and the Specialist Checklist (R. at 7), is compared to the final order, this Court is unable to discern what underlying facts the hearing officer relied upon to find that Dollar General had failed to show it denied the claim in good faith.

For example, the Court can not tell if the reason the hearing officer assessed the penalty was because he found the absence of dizziness in the medical records to carry more weight than Ms. Garrett's testimony. Or, perhaps the hearing officer rejected Ms. Garrett's testimony that the claimant's presence at the store that day was not mostly personal (to retrieve her paycheck stub) but mostly to the benefit of the petitioner (obtain a work schedule). Maybe the hearing officer did not believe Ms. Garrett. These ambiguities, as explained in the case law, do not comply with the requirements of section 4-5-314(c). Particularly deficient is the hearing officer's failure to discuss at all Ms. Garrett's testimony,

and to explain how and why Ms. Garrett's testimony failed to demonstrate that the petitioner had performed a good faith investigation, or how and why the testimony of Ms. Garrett failed to demonstrate a denial in good faith.

It is therefore ORDERED that the final order is reversed, and the penalty shall be vacated. Court costs are taxed to the respondent.

Ellen Hobbs Lyle

ELLEN HOBBS LYLE
CHANCELLOR

cc: D. Brett Burrow
Joshua Baker
William Barry Wood
Margaret Jane Powers

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

Deputy Clerk and Master
Chancery Court

2/12/10
Date