

**In the Matter of**

**TROY WINGATE.**

**Case No. 69-06**

**Final Order of Commissioner Dan Gardner**

**Issued July 18, 2006**

**SYNOPSIS**

Respondent, a residential painting contractor, failed to complete and return BOLI's 2005 prevailing wage rate survey by the date BOLI had specified. The Commissioner found that aggravating circumstances outweighed the mitigating evidence presented by the Respondent, and that \$750 was an appropriate civil penalty for Respondent's violation of ORS 279C.815(3). ORS 279C.815(3), ORS 279C.865; OAR 839-025-0520; OAR 839-025-0530; OAR 839-025-0540.

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The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on June 6, 2006, in the conference room of the Oregon Bureau of Labor and Industries, 3865 Wolverine NE, E-1, Salem, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter Cynthia L. Domas, an employee of the Agency. Respondent Troy Wingate was present and was not represented by counsel.

The Agency called two witnesses: Marsha Jossy and Vee Souryamat, Wage and Hour Division employees.

Respondent called himself as a witness.

The forum received into evidence:

a) Administrative exhibits X-1 through X-16 (submitted or generated prior to hearing);

b) Agency exhibits A-1 through A-3 (submitted prior to hearing), and A-4 through A-6 (submitted at hearing).

Having fully considered the entire record in this matter, I, Dan Gardner, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

#### **FINDINGS OF FACT – PROCEDURAL**

1) On March 24, 2006, the Agency issued a Notice of Intent to Assess Civil Penalties (“Notice”) in which it alleged that Respondent Troy Wingate Painting was an employer that performed nonresidential construction work in 2005 and received the Commissioner’s 2005 Construction Industry Occupational Wage Survey, failed to complete and return the forms by September 19, 2005, as required by the Commissioner, and has never completed and returned the Survey, in violation of ORS 279C.815(2). The Agency alleged the violations were aggravated in that Respondent knew, or should have known of these violations and had more than ample opportunity to comply with the law, but failed to do so; that Respondent failed to take appropriate action after having its violation pointed out to remedy the violation or prevent its recurrence; and that the Agency had to expend significant resources trying to obtain Respondent’s compliance with the law. The Agency further alleged that the violation was serious and of great magnitude of the violation since it affects the Commissioner’s ability to accurately determine the prevailing wage rates and could result in skewing of the established rates, which in turn impacts contractors, subcontractors, and employees throughout the site working on public projects and also on the public agencies and the public fisc. The Agency sought a civil penalty of \$1,000 for the alleged violation.

2) On March 27, 2006, Troy Wingate faxed three pages to the Agency in response to its Notice of Intent, including a one page answer and request for hearing on behalf of Troy Wingate Painting, in which Wingate alleged, among other things:

“\* \* \* I didn’t think the survey applied to me when it was first mailed because I noticed that it said on the front of the survey that it applied to commercial work. I only do residential work \* \* \*. I have complied with you by returning the completed survey \* \* \*.”

3) On April 27, 2006, the Hearings Unit issued a Notice of Hearing to Respondent and the Agency stating the time and place of the hearing as June 6, 2006, at 10:00 a.m., at BOLI’s Salem office located at 3865 Wolverine St. NE, Bldg. E-1, Salem, Oregon. Together with the Notice of Hearing, the forum sent a copy of the Order of Determination, a document entitled “Summary of Contested Case Rights and Procedures” containing the information required by ORS 183.413, a Servicemembers Civil Relief Act (SCRA) Notification, and a copy of the forum’s contested case hearings rules, OAR 839-050-000 to 839-050-0440.

4) On April 28, 2006, the Agency moved to amend its Notice of Intent by interlineation as follows:

- a) Delete the “(c)” after the cite to ORS 279C.815(c) in the first line of paragraph 1, so it reads “The Commissioner, consistent with ORS 279.815, established . . .”;
- b) Change paragraph 2 in the following manner by interlineation:
  - i) Change the first full sentence to “Respondent, an Oregon employer during all times relevant in 2005, received . . .”
  - ii) Change the cite to ORS 279.815(2) to ORS 279C.815(3),“
  - iii) Change the cite to OAR 839-025-530(3)(i) to OAR 839-025-530(n).

Respondent filed no objections, and on May 9, 2006, the ALJ granted the Agency’s motion.

5) On May 8, 2006, the Agency filed a motion for partial summary judgment against “Respondent Troy Wingate Painting,” alleging that the Agency was entitled to

partial summary judgment because Respondent admitted in its answer that “he did not timely return the Prevailing Wage Rate survey for 2005.”

6) On May 10, 2006, the Agency moved a second motion to amend its Notice of Intent by interlineation to name “reflect the real party in interest, Troy Wingate.” In support of its motion, the Agency attached a Corporation Division check to show that “Troy Wingate Painting is not registered with the Division” and a CCB license check “showing the business as a sole proprietorship.”

7) On May 17, 2006, Troy Wingate mailed objections to the Agency’s motion for partial summary judgment.

8) On May 24, 2006, the ALJ issued an Interim Order granting the Agency’s second motion to amend and denying the Agency’s motion for partial summary judgment because Troy Wingate Painting, the entity named as the Respondent in the Notice of Intent, was no longer the Respondent in the case.

9) On May 30, 2006, the Agency filed a second motion for partial summary judgment, this time against Respondent Troy Wingate. The motion was based on the same grounds as the original motion.

10) On June 2, 2006, the ALJ issued an Interim Order denying the Agency’s second motion for partial summary judgment because of timeliness. In pertinent part, the Interim Order stated:

“The hearing in this matter is scheduled for June 6, 2006. OAR 839-050-0150 does not place any time restrictions on when a motion for summary judgment may be filed. Given the significance of a summary judgment ruling and the fact that I am not able to issue a substantive ruling on the Agency’s motion until June 5 because of my work schedule, I conclude that the Agency’s motion is untimely. The Agency’s motion is **DENIED**. The Agency will need to prove its case in its entirety at hearing.”

11) At the start of the hearing, the ALJ verbally advised the Agency and Respondent of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

12) The ALJ issued a proposed order on June 15, 2006, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. The Agency timely filed a request for an extension of time to file exceptions. Based on the Agency's showing of good cause, the ALJ granted an extension until July 3, 2006. On July 3, 2006, the Agency filed exceptions to the proposed order.

### **FINDINGS OF FACT – THE MERITS**

1) Respondent was a sole proprietorship and painting contractor in the year 2005 who only worked on residential projects. Respondent was also an employer in 2005. At all times material herein, Respondent received his mail at 1175 Tucker Road, Hood River, OR 97031.

2) The Research and Analysis section of the Employment Department contracted with BOLI in 2005 to conduct a Construction Industry Occupational Wage Survey. The BOLI Commissioner planned to, and did use the survey to aid in the determination of the prevailing wage rates in Oregon.

3) As part of its contract with BOLI, the Employment Department maintained electronic files showing the name of each business contractor to whom wage survey packets were sent, the address where the packets were sent, whether it was returned, the date the packet was sent for the respective year in which it was sent, whether or not it was timely returned, and when the survey was returned if it was.

4) On July 5, 2005, the Employment Department mailed a "presurvey postcard" to Oregon business contractors, including "Troy Wingate Painting, 1175

Tucker Road, Hood River, OR 97031.” The following pertinent statements were printed on the back of the folded postcard:

“Oregon law requires the Commissioner of the Bureau of Labor and Industries to determine the prevailing wage rate for work performed in Oregon in specified trades and occupations in the construction industry. Your firm has been identified as a construction-related business.

“Please review the information on the inside of this pre-survey postcard.”

The following statements were printed on the inside of the folded postcard:

“2005 CONSTRUCTION INDUSTRY OCCUPATIONAL WAGE SURVEY

“The Construction Industry Occupational Wage Survey is an annual mandatory survey of all employers with construction-related employment. Your firm will receive a survey booklet in the mail in late August that contains all of the necessary forms and instructions for completing the survey.

“The following guidelines will help your firm prepare your records.

- “The survey period includes September 1, 2004 through August 31, 2005.
- “You will be asked to select the week during which your firm performed the most **non-residential** hours of work. This week is referred to as your “peak week”. You will only submit data for this peak week. If your firm does both residential and non-residential work, now may be a good time to begin to identify the non-residential jobs. The survey asks for wage data on **all non-residential work, not just prevailing wage work.**
- “You will be asked to identify the location of the work. Please keep track of the counties in which non-residential work is performed. A map will be included on the survey form to help you identify in which BOLI wage rate regions the counties are located.
- “\* \* \* \* \*

“If your firm has closed or no longer performs construction-related work, please call us at \* \* \*. You may also contact us by e-mail at [boli.survey@state.or.us](mailto:boli.survey@state.or.us).”

5) On August 10, 2005, the Employment Department mailed a 2005 wage survey booklet to “Troy Wingate Painting, 1175 Tucker Road, Hood River, OR 97031” that included a postage paid envelope for return of the survey.

6) The 2005 wage survey booklet was 8½” x 11” in size, with the following words printed on the cover in several different sizes of large type (approximate relative sizes shown):

**“BOLI**

Oregon Bureau of Labor and Industries

***This survey is  
Required by Law  
(ORS 279C.815)***

**CONSTRUCTION INDUSTRY  
OCCUPATIONAL WAGE SURVEY 2005**

**FILING DEADLINE:**

**September 19, 2005**

**FOR PUBLIC AND PRIVATE PROJECTS  
(DOES NOT INCLUDE RESIDENTIAL PROJECTS)”**

7) The inside front cover of the 2005 wage survey booklet asked the recipient to provide the firm’s name, name and title of the person who completed the survey, Construction Contractors Board (CCB) number, phone, e-mail, and fax number, along with a certification that the information provided in the wage survey was correct. The following language was printed immediately afterwards:

**“THIS COVER AND THE NEXT FULL COLORED PAGE SHOULD BE REMOVED TO COMPLETE THE SURVEY. ELECTRONIC FILING INSTRUCTIONS ARE INCLUDED ON THE BACK OF THE WAGE DATA FORM.**

**“QUESTION 1** Did your firm do any **non-residential work** in the state of Oregon between September 1, 2004, and August 31, 2005? This includes excavation, remodeling, painting, and temporary workers sent to

construction sites. Labor performed on site in connection with material deliveries is also considered construction work. If your firm had no employees, other than the owner(s) or executive officers, please answer no.”

Printed immediately after this statement was a large “NO” that could be circled and a bold arrow after it. Directly underneath the “NO” was printed “Go to Question 2.” The following language was printed on the bottom on the inside front cover:

“You are required by Oregon law (ORS 279C.815) to provide this information. The full text of the law is available at [www.boli.state.or.us](http://www.boli.state.or.us). Failure to return this survey or filing fraudulent or incomplete information may result in penalties. Please retain a copy of your forms for your records.”

8) Question 2 is printed on the lower half of the inside back cover of the booklet. It asks for a response to the following:

“Which of the following circumstances best describes why your firm answered no to Question 1:

- “The firm did **only residential work** between September 1, 2004, and August 31, 2005.
- “The firm is **closed**.
- “The firm had **no employees** other than owners or corporate officers.
- “The firm had **no work in Oregon** within the survey period.
- “The firm had **subcontracted out all work**.
- “The firm **does not do construction work**. (Please write below a brief description of the type of work the firm does.)

“If you answered **NO** to Question 1 and have checked a box for Question 2, please sign and return this form in the postage paid envelope. Do not complete the wage data form which is only for non-residential construction data.”

9) Respondent received the survey booklet, but did not return it until March 2006 because he did not believe it applied to him. Respondent based his belief on the language on the front page of the booklet that stated “FOR PUBLIC AND PRIVATE PROJECTS (DOES NOT INCLUDE RESIDENTIAL PROJECTS)” and the fact that he only works on residential projects.

10) On September 26, 2005, the Employment Department mailed a reminder postcard to “Troy Wingate Painting, 1175 Tucker Road, Hood River, OR 97031.” The following language was printed on the postcard:

**“Survey Past Due [-] Please Respond**

“The Oregon Employment Department recently mailed the Construction Industry Occupational Wage Survey book to your company. The survey filing deadline has passed. We have not received a completed survey from your firm.

“If you received the survey book, please complete and return the survey form in the postage paid envelope. You may also e-mail your response to *boli.survey@state.or.us* following the electronic filing guidelines printed in the survey book.

“If you have not received the survey book or need assistance completing the survey, please contact the BOLI Wage Analysis Unit. You may call 503.947.1282 or toll free 800.262.3912 ext. 7-1282 (TDD 503.947.1391). You may also contact BOLI Wage Analysis Unit via e-mail: *boli.survey@state.or.us* or via fax at 503.947.1210.

“Your timely response and cooperation are essential for determining accurate and fair wage rates for Oregon’s contractors and workers.

**“You are required by Oregon law (ORS 279C.815) to provide the information requested. The full text of the law is available at *www.boli.state.or.us*. Filing fraudulent or incomplete information may result in a monetary fine (civil penalties) of up to \$5,000.”**

11) On October 10, 2005, the Employment Department mailed a second 2005 wage survey booklet to “Troy Wingate Painting, 1175 Tucker Road, Hood River, OR 97031.” The booklet was identical to the booklet sent to Respondent on August 10, 2005, with one significant difference – the following statements were also printed conspicuously on the front cover:

**“SURVEY PAST DUE**

**“Please Respond Immediately**

**Final Notice”**

12) Returned wage surveys were accepted and included in the survey results as late as October 28, 2005. The survey database was then closed to prepare for a rate setting meeting with the Commissioner of the BOLI and his staff on November 4,

2005. Any surveys received after October 28, 2005, were not considered when the Commissioner reviewed the survey data for the setting of the prevailing wage rates.

13) On February 17, 2006, the Prevailing Wage Unit of the Bureau of Labor and Industries mailed a letter to "Troy Wingate Painting, 1175 Tucker Road, Hood River, OR 97031" that contained the following pertinent language:

"The prevailing wage rate laws require the Commissioner of the Bureau of Labor and Industries to conduct an annual wage survey to determine the wages rates for work performed in Oregon in specified trades and occupations in the non-residential construction industry. \* \* \* Based on the information obtained in this survey, prevailing rates of wage are determined by the Commissioner to be used on public works contracts in the state.

"ORS 279C.815 requires you to report information pertaining to wages paid in non-residential construction to the Commissioner as requested in the annual survey. Our records indicate that despite reminders, you failed to return a report for the 2005 Construction Industry Occupational Wage Survey by September 19, 2005. Our records also indicate that this may not be the first time you have failed to respond as required. If that is the case, you have violated the law in multiple years.

"Since you have not responded to the survey, it has become necessary to begin the Administrative Process. We will soon serve upon you a Notice of Intent and ultimately a judgment in this matter. You are advised that failure to return this survey or filing fraudulent or incomplete information will result in penalties. We would prefer to resolve this matter prior to taking legal action; however, without your cooperation, this is not possible. You may stop this action by completing and returning the enclosed Industry Occupational Wage Survey by no later than March 3, 2006.

"If you did not perform any non-residential construction within Oregon during the time period covered by this survey, you can satisfy your legal obligation to respond to the survey by answering questions 1 and 2 of the survey as directed, signing it where indicated and returning it in the pre-addressed, postage paid envelope included in the survey booklet.

"If we do not receive a completed survey from you by March 3, 2006, we will assess a civil penalty against you based on your continuing violations. Each day that you do not provide the survey is a separate violation, and each violation can subject you to a civil penalty of up to \$5,000. \* \* \*"

14) From August 2005 to the present, Respondent has had two tenants in his house. Sometimes his roommates pick up his mail and misplace or mishandle it.

Because of this, Respondent was not aware that the Employment Department's July 5, 2005 pre-survey postcard, or the Department's September 26 and October 10, 2005, reminders had been sent to him until he received the Agency's case summary. Respondent was also not aware of BOLI's February 17, 2006, letter until he received the Agency's case summary. Respondent has since resolved the problem with his tenants and they no longer handle his mail.

15) Jossy and Souryamat were credible witnesses and the forum has credited their testimony in its entirety.

16) With one exception, the forum found Troy Wingate's testimony entirely credible, including his statement that he believed he was not required to complete the wage survey because of the language on the survey's front cover stating "FOR PUBLIC AND PRIVATE PROJECTS (DOES NOT INCLUDE RESIDENTIAL PROJECTS)." Wingate testified that he mailed a wage survey form to the Employment Department and faxed a copy to BOLI with his answer and request for hearing after receiving the Agency's Notice of Intent. The Employment Department's records do not show that they ever received a survey from Respondent, casting doubt on Wingate's claim that he mailed the survey to the Employment Department. There is no dispute that Respondent faxed his answer and request for hearing to BOLI. The answer, which is one page long, includes the statement "I have complied with you by returning the completed survey" and was offered by the Agency as Exhibit A-3. However, the fax machine printed the characters "P:1/3" on the upper right hand side of the answer, indicating that Respondent's fax included two more pages. Those pages were not offered in evidence. Exhibit A-5, which is a copy of the wage survey form pages that Respondent was required to submit and appears to be the original of a document Respondent filed in support of his objections to the Agency's motion for partial summary judgment,

coincidentally is also two pages long. That document is dated "3/26/06," the date before Respondent faxed his answer to BOLI. Respondent's testimony, in combination with the missing pages that were in the Agency's power to produce or explain, creates an inference that Respondent in fact faxed the completed wage survey to BOLI with his answer.

### **ULTIMATE FINDINGS OF FACT**

- 1) Respondent was an Oregon employer in the year 2005.
- 2) The Commissioner conducted a wage survey in 2005 that required persons receiving the surveys to make reports or returns to the Agency for the purpose of determining the prevailing rates of wage.
- 3) Respondent received the 2005 wage survey packet.
- 4) Respondent failed to return the completed survey by September 19, 2005, the date specified by the Commissioner.

### **CONCLUSIONS OF LAW**

- 1) At all times material herein, Respondent was a person as defined in ORS 279C.815(1).
- 2) Respondent's failure to complete and return the Commissioner's 2005 wage survey in a timely manner constitutes one violation of ORS 279C.815(3).
- 3) The Commissioner has the authority to assess a civil penalty for violations of ORS 279C.815(3). ORS 279C.865. The imposition of a \$750 civil penalty for Respondent's single violation of ORS 279C.815(3) is an appropriate exercise of the Commissioner's discretion.

### **OPINION**

#### **INTRODUCTION**

To prove that Respondent violated ORS 279C.815(3), the Agency must establish the following elements:

- (1) Respondent is a “person”;
- (2) The Commissioner conducted a survey in 2005 that required persons receiving the surveys to make reports or returns to the Agency for the purpose of determining the prevailing rates of wage;
- (3) Respondent received the Commissioner’s 2005 survey; and
- (4) Respondent failed to make the required reports or returns within the time prescribed by the Commissioner.

*In the Matter of Cedar Landscape, Inc.*, 23 BOLI 287, 292 (2002).

**A. Respondent was a “person” in 2005.**

Under ORS 279C.815(3), a “person” includes an employer. Respondent’s admission that he employed persons in his painting business in 2005 proves the first element of the Agency’s case.

**B. The Commissioner conducted a wage survey in 2005.**

The Agency submitted an affidavit by Leanna D. Harmon, a Research Analyst employed by the Oregon Employment Department, that established: (1) BOLI contracted with the Employment Department from 1999 to 2005 to conduct Construction Industry Occupational Wage Surveys; (2) the purpose of the surveys was to aid in the determination of the prevailing wage rates in Oregon; and (3) that those surveys, including the 2005 survey, were in fact conducted. The Agency also provided a copy of the survey booklet. This proves the second element of the Agency’s case.

**C. Respondent received the Commissioner’s 2005 wage survey.**

The Agency alleged in its Notice of Intent that Respondent received the Commissioner’s wage survey in 2005 and Respondent testified that he received it at 1175 Tucker Road, Hood River, OR 97031, the address to which it was sent. This proves the third element of the Agency’s case.

**D. Respondent failed to return the 2005 wage survey within the time prescribed by the Commissioner.**

Harmon's affidavit and the text printed on the front cover of the wage survey booklet establish that the filing deadline for the Commissioner's 2005 wage survey was September 19, 2005. Harmon's affidavit further establishes that any surveys submitted after October 28, 2005, could not be considered when the Commissioner reviewed the survey data for the setting of the prevailing wage rates because the Employment Department closed its survey database on that date to prepare for a rate setting meeting with the Commissioner of BOLI and his staff on November 4, 2005. Respondent testified that he submitted the wage survey to the BOLI and Employment Department on or about March 27, 2005, but not before. This evidence establishes that Respondent did not timely submit the 2005 wage survey and satisfies the final element of the Agency's case.

**CIVIL PENALTY**

In this case, the Agency seeks a \$1,000 civil penalty for Respondent's 2005 wage survey violation. In determining the appropriate size of the penalty, the forum must consider the aggravating and mitigating factors set out in OAR 839-025-0520.

**A. Aggravating circumstances.**

The Agency alleged several aggravating circumstances.

First, Respondent knew, or should have known, of his violation and had ample opportunity to comply with the law, but failed to do so. There is no dispute that Respondent actually received the wage survey booklet mailed to him on August 10, 2005, at 1175 Tucker Road, Hood River, OR 97031. Also undisputed is the fact that the Employment Department mailed its pre-survey notice and two reminders to the same address. Respondent did not dispute that these mailings arrived at his house, only that he did not receive them because of his tenants' mishandling of his mail. However, since

the mailings were sent to the correct address, Respondent is accountable to have read them, despite any mishandling by his tenants.<sup>i</sup> Had Respondent read the pre-survey notice, he would have learned that the wage survey “is an annual mandatory survey of all employers with construction-related employment.” Similarly, the Employment Department’s first reminder would have informed him that he was “required by Oregon law \* \* \* to provide the information requested.”

Second, Respondent failed to take appropriate action, after having its violation pointed out, to remedy the violation or prevent its recurrence; and the Agency had to expend significant resources trying to obtain Respondent’s compliance with the law. The Agency established that the Employment Department sent two reminder notices to Respondent after mailing the survey booklet, that the Agency sent a follow-up letter indicating its intent to issue a Notice of Intent and assess civil penalties if Respondent failed to comply, and that Respondent still failed to submit the 2005 wage survey, necessitating the present enforcement action.

Third, the Agency further alleged that the violation was serious and of great magnitude since it affected the Commissioner’s ability to accurately determine the prevailing wage rates and could result in skewing of the established rates, which in turn impacts contractors, subcontractors, and employees throughout the site working on public projects and also on the public agencies and the public fisc. Based on the fact that the survey asks contractors to state whether or not they performed non-residential construction, the forum infers that the survey was intended to be the Commissioner’s source of information as to whether or not the surveyed contractors were required to submit wage data.<sup>ii</sup> The forum further infers that, in the absence of Respondent fulfilling his legal obligation to complete and return the survey, the Commissioner had no way of knowing if Respondent had wage data that might affect the calculation of prevailing

wage rates. If all contractors imitated Respondent's non-compliance, it would be impossible for the Commissioner to carry out his statutory duty of determining the prevailing wage rates. Consequently, even though Respondent would not have provided any wage data because he only performed residential work, during the survey period, this must be considered a serious violation. See *In the Matter of Emmert Industrial Corporation*, 26 BOLI 284, 289 (2005).

**B. Mitigating circumstances.**

The forum considers two mitigating circumstances. First, because Respondent performed only residential work during the wage survey period, his failure to timely submit the wage survey had no statistical impact on the Commissioner's ability to carry out his statutory duty of accurately determining the prevailing wage rates. Second, his belief, based on the fact that he performed only residential work, that he was not required to complete the survey based on the following statement conspicuously printed on the front cover of the 2005 wage survey booklet: "FOR PUBLIC AND PRIVATE PROJECTS (DOES NOT INCLUDE RESIDENTIAL PROJECTS)." However, this belief is negated by the language in the pre-survey postcard stating that the survey was a "mandatory survey of all employers with construction-related employment."

**C. Amount of civil penalty.**

The Agency sought a civil penalty of \$1,000. There are several aggravating factors and only one mitigating factor. Under the circumstances, \$750 is an appropriate civil penalty.

**AGENCY'S EXCEPTIONS**

The Agency filed exceptions in which it objected to the ALJ's reduction of the proposed amount of civil penalty from \$1,000 to \$100. The forum has addressed those exceptions in the Opinion and increased the amount of civil penalty from \$100 to \$750.

## ORDER

NOW, THEREFORE, as authorized by ORS 279C.865, and as payment of the civil penalty assessed as a result of his single violation of ORS 279C.815(3), the Commissioner of the Bureau of Labor and Industries hereby orders **Troy Wingate** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and Industries in the amount of SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00), plus any interest that accrues at the legal rate on that amount from a date ten days after issuance of the Final Order and the date Respondent complies with the Final Order.

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<sup>i</sup> *Cf. In the Matter of Landscape Company of Portland, LLC*, 22 BOLI 69, 76 (2001) (the disarray of respondent's internal affairs was not a mitigating factor; employers cannot avoid their legal responsibilities by inattention.)

<sup>ii</sup> If the Commissioner already knew this information, there would be no reason to ask for it in the survey.