

FLSA NARRATIVE

New Beginnings of Tampa, Inc.
1402 Chilkoot Avenue
Tampa, FL 33612
Contact: Pastor Thomas E. Atchison, CEO
Phone: 813-374-2275

EIN: 52-2376444

Case ID: 1747138
Case Number: 2015-342-25040

EX 7 (E) : **EX 7 (E)** . Media reports indicated individuals in the program were made to volunteer and work without pay most notably in area stadium and arena concession stands. The investigation was mainly focused on these individuals in determining if an employment relationship existed between New Beginnings and its' clients, determining if they performed work for a business purpose; and for any work deemed to be performed for a business purpose, determining if the activity was subject to the FLSA and required payment from New Beginnings or if the work performed was exempt from the Act.

Investigation Period: December 2, 2012-November 30, 2014

MODO/History: Tampa District Office – no history.

COVERAGE:

Section 3(s)(1)(a)(ii): Enterprise coverage does not apply to New Beginnings because it is a 501 (C)(3) non-profit corporation; however, Pastor Tom Atchison provided evidence of the following in gross receipts: **EX 4** . Gross receipts from the two thrift stores were later extracted from the total for WHI and represent a small portion of the total **EX 4** for the period of January 2014-December 2014 (9% of gross) **EX 4**

Section 3(s)(1)(a)(i):

Individual coverage applies to **EX 7 (C)**, as of January 2014 when he began regularly using the Internet as part of his job duties and to **EX 7 (C)**, who regularly uses the Internet as part of his job duties **EX 4**.

Individual coverage may apply to anyone who has volunteered to work concessions for local stadium events who regularly accepted and processed interstate credit card payment transactions from customers as part of their duties (*This determination can only fully be made via independent review of coverage for concessionaire companies who own and utilize the credit card machines*) (**Ex B-4.a, B-6.a, back of B-8, back of B-14, and B-17.a**).

Individual coverage currently does not apply to the small number of residents in the recovery program (approx. 4-8 out of 130 on any given day) who volunteer in one of the two thrift stores owned by New Beginnings because they are not engaged in interstate commerce as a regular part of their job duties. Their duties were reviewed because working in the thrift store does serve a business purpose but their duties are not subject to the FLSA. These residents assist local customers, accept cash payments, do not use the Internet or process credit cards for these duties, and deliver the furniture locally when purchased (**Ex B-6.a, back of B-8, B-10, B-11, B-13.b, B-14, B-17.a, B-18, and B-3**).

Individual coverage does not apply to any volunteer work the residents have performed for their Church, for other non-profits, homeless feedings or volunteering for different parking assistance and trash pick-up for non-profit Kingdom Promotions at venues like the Florida State Fair, Yankees Spring Training, RV Show, Tampa High School Graduation, Tampalooza, or the Daytona 500 as their duties did not place them in the stream of interstate commerce (**Ex B-7, D-3**).

Corporate Officers (Ex C-1, C-5)

Thomas E. Atchison, DPVT founder/owner

EX 7 (C)

Subject is a non-profit organization that operates a transitional recovery program for addicts, some previously homeless, and Veterans who need assistance in recovering from various addictions and life issues. With the exception of Veterans while they are in the program, many have served as volunteers in various capacities at the New Beginnings facilities, their Church, and with other local non-profits as part

of their recovery process in learning to give back. The most notable and questionable volunteer events involve serving in concessions stands at various local stadium sporting and entertainment events. New Beginnings also operates a separate mission intended to provide emergency shelter; two thrift stores; and feeds the homeless population in their neighborhood. Pastor Tom Atchison is the founder and owner and additionally pastors a nearby church which is not subject to this investigation. New Beginnings of Tampa, Inc. filed with the Florida Department of State Division of Corporations on September 4, 2002 and has three employees.

Nature of the business: As part of their therapy, residents in the transitional recovery program are expected to participate in daily meetings including Morning Prayer, Alcoholics Anonymous; Cocaine Anonymous; Recovery in Christ; Bible “level” meetings; and Church on Sundays and Wednesdays. As they progress, they are taught to carry their own weight, to care and give back to others by pitching in around their residence, picking up trash outside, raking the leaves, cleaning their rooms, sharing in the food prep and dining room activities, and general care of the property at their shared residence. When they are far enough along in their sobriety, they are able to volunteer off the property at the Church and Feeding America, to visit the mission, to participate in offering meals to people living on the streets, to volunteer at the Thrift Stores operated by New Beginnings, and to offer their services to the concessionaires at various recreational and sporting events. Only clients who have progressed far enough to really begin practicing work skills in preparation for finding their own outside work are allowed to volunteer in the Thrift stores or at area stadium events. Once they are ready and find their own outside employment they work with an associate pastor of the church who helps them develop a program exit strategy. For the best chance of transitioning successfully, the residents typically need time to work and earn enough money to pay any outstanding fines, back child support, legal bills, and to save money for car insurance, deposits on an apartment, etc. New Beginnings typically takes them to a local bank and helps them set up their own accounts and advises them on what they will need to be successful. Clients are encouraged to be responsible and begin sending money to their wives or mothers of their children in an effort to begin building those relationships again because the stability of their outside relationships plays a large part in whether they will be successful in their transitions. The overall goal of the program is that if they are ready and able to achieve employment within 6 months of entering the program, they generally need about 6 additional months of transition in working, paying off their debts, and saving money but after that period of time they are expected to exit and find their own housing. Their only contribution to the program at this end stage is that they pay room and board of \$150 per week to the program to cover

their expenses during their transition.

Mission residents consist of individuals who do not necessarily have addiction issues to recover from and are instead ready to find employment and get back on their feet but they need short term housing assistance while they do this. The mission residents pay \$10 per day as a program fee during their stay. During 2014, New Beginnings allowed some of the mission residents to also volunteer at stadium events if they passed the stadium eligibility criteria and required trainings in return for 3 days of program fees (**Ex B-19.b, B-19.c, B-9, C-1.b**). Pastor Tom explained that the trial really didn't work out so they stopped offering this opportunity to mission residents. New Beginnings provided documentation of mission residents who served in this capacity and showed that some were able to cover their program fees and others left owing a balance **EX 4**

Currently, all mission residents are employed in outside occupations, are paying their program fees, and are working towards paying off personal debts and saving their wages for permanent housing (**Ex B-1.b**).

The "homeless" population New Beginnings has served meals to on the streets are not used in any volunteer work programs (**Ex B-1.b**).

Volunteers:

Non-Profits: New Beginnings clients who volunteer around their own residence and to different non-profit area ministerial and feeding programs as part of their therapy explained they are not forced to perform any particular sort of work duties but are expected to participate in whatever activities are the most beneficial to their own recovery and beneficial to helping them become productive members of society, learning to care for and do for others, and to find their own employment and move into their own housing when they are ready. They perform these services with no expectation of remuneration and they agree to this in writing when they apply and are accepted into the program (**Ex D-4**). When the clients volunteer at New Beginnings thrift stores, there is an innate business purpose but these activities are not currently subject to the FLSA as discussed in coverage above.

For-Profits: New Beginnings clients who volunteer to for-profit concessionaires at area sporting or recreational events also represent they are volunteering of their own free will but because the concessions companies operate with a business purpose (for profit), volunteers may not perform work subject to the

FLSA that would otherwise be performed by regular employees. Because this is an area of concern, a discussion of employment relationship factors is provided below as well as a discussion of the potential application of the Section 213(a)(3) exemption to work performed at area facilities. **(Ex B-4.a, B-6.a, B-8, B-9, B-13, B-14, back of B-14, B-17.a, B-19).**

Employment Relationship:

An employment relationship between New Beginnings and its' clients was not evident with the exception of volunteer service in the thrift stores owned by New Beginnings because working in a retail store owned by the business is defined as serving a business purpose regardless of the intentions of either party. Because the thrift store service is not subject to the FLSA, it is excluded from the discussion of the six employment relationship factors listed below.

Also excluded from discussion below is the analysis of any potential employment relationship between New Beginnings clients and any outside concessions companies as this is not pertinent to the investigation of New Beginnings of Tampa, Inc.

1.The Nature and Degree of Control: New Beginnings does not assert employment control over its' clients. Much of the volunteer work performed is to other non-profits or around their own residences as previously discussed and the majority of the services performed are not subject to the FLSA.

In regards to recovery and mission residents volunteering for concession companies at local stadium/arena events, New Beginnings does not assert control over whether a resident volunteers for these events or other areas of service they are more comfortable with and does not have any control over who meets the concession companies requirements of who is accepted as a volunteer or what training is required, hours and times worked, duties and method of performance, standards for cash handling, inventory management, number of workers required at a stand, standards of cleanliness, etc. No employment control was found between New Beginnings and either the residents in the recovery program or the mission residents who chose and were accepted as volunteers.

The only significant control documented between New Beginnings and its' clients is in the requirement

that residents in the recovery program must attend scheduled therapy meetings throughout the week such as Recovery in Christ, Morning Prayer, Bible level meetings, Alcoholics Anonymous, Cocaine Anonymous, and church services on Wednesdays and Sundays and residents at the Mission must cover a charge of \$10 per day for program fees (**Ex B-1.b**). These requirements are not deemed to represent the type of control apparent in an employment relationship. The control asserted over the residents by New Beginnings is strictly program and therapy based (**Ex B-4.b, B-6, B-8, B-9, B-10, B-11, B-13, B-14, B-17, B-18, B-19.b, D-4**).

**Any questions regarding the potential nature and degree of control asserted over the volunteers by outside companies would need to be made on a case by case basis if deemed necessary as the findings made in this investigation are specific only to subject firm.*

2. Degree of Permanency: Residents in the recovery program are not expected to stay in the program long term but only for what is needed in terms of their personal therapy and becoming employable and independent so they can resume their own lives. New Beginning's goal in helping the residents to successfully transition is up to 6 months to recover and find their own outside employment and potentially another 6 months to work and save money so they can be successful when they transition into becoming completely self-supporting and re-integrated into their own lives (**Ex C-1.c**).

The degree of permanency in regards to the mission residents who were eligible to volunteer during the period of time New Beginnings allowed them to volunteer for stadium events is limited as well since the mission was set up to only provide emergency housing while the residents found employment and saved money for their own housing, etc. Pastor Tom Atchison explained this temporary housing is expected to be for 30-60 days maximum although exceptions have been made. One such exception is that when a resident was going back to school, he knows they have allowed them to stay while they were trying to better themselves. The program is designed to assist and not enable people to just depend on \$10 per day for room and board so the situations are individual but the degree of permanency is still expected to be short term (**Ex B-1.b, B-1.c, B-9**).

The degree of permanency in regards to the relationship between New Beginnings and stadium concessionaires was briefly reviewed and is reportedly based on designated contract periods of one year or less.

3. The Workers Skill and Initiative: Activities performed by the volunteers are generally repetitive and require minimal skill. Activities include feeding the homeless or other residents; basic cleaning and maintenance tasks around their church and residence; pointing cars into parking spaces at events; and trash pick-up. Volunteering at stadium concession events requires certified food service training and possible alcohol sales training before any volunteer is allowed to work with either food or alcohol at these events. Many non-profits, even area high school groups attend the training sessions, go through the background checks and volunteer their service in this same way, performing the same tasks, to help their group earn donations from the concessions companies. The process is reportedly the same for any groups of volunteers working these events.

4. Work is integral to operations: Work performed by the volunteers is not integral to the operations or funding of New Beginnings but is considered to be integral to their own success in completing the recovery program and being ready and able to successfully transition into maintaining their own outside employment and lives. New Beginnings is functioning as a ministry and is not financially dependent on the work activities of its residents.

Revenue from “events” including concessions work, security guard services, parking lot services, trash pick-up, etc. represented 26.02% of gross receipts in 2014 and only 6.6% of gross receipts in 2013; neither of which represent that the overall “work” element of the program is “integral” to their operations as in a traditional employment relationship **(Ex D-17, D-17.b)**.

Client volunteer service to the outside companies at events and determinations regarding whether their work is integral to the operations of these companies would need to be made on a case by case basis if deemed necessary as the findings discussed in this investigation are specific only to subject firm.

5. Relative Investment in Facilities and Equipment: Clients do not have an investment in facilities and equipment. Anything needed is provided by New Beginnings. When clients volunteer at stadium events, everything needed to perform the work is provided by the outside companies.

6. Opportunity for Profit and Loss: The clients in the recovery program and those from the mission who

have volunteered in the community do not hold themselves out as independent businesses risking loss or potentially gaining a profit.

When clients volunteer for outside concession companies at stadium events, they do so without expectation of remuneration. The clients do not have an opportunity for profit or loss. The charity has an opportunity through the volunteer service to earn or lose donation money but the potential does not represent the opportunity for profit that is typical for a business owner or in the same way the concessions company has an opportunity for profit. Based on data provided by the charity for one concessions company for the period of 9/6/2014 to 10/26/2014, New Beginnings earned EX 4 through their volunteer service while the outside concessionaire earned EX 4 in gross receipts for the clients' work. The opportunity for profit or loss from the concessions company is that if the charity operates perfectly per the concession companies' standards, it will receive the full donation in accordance with a standard contract. The potential 'loss' for the charity is that their maximum attainable donation is deducted from for any errors or costs incurred including not providing enough volunteers, not cleaning well enough, food waste, any mismanagement of materials or money, loss of inventory, not following policies, required hours of work, etc.

Neither the charity nor the clients have control over the requirements of who is allowed to serve; what training they are required to have; how many are needed per stand; the type of food or beverage to be sold; the quality of the raw products; the sales price; marketing or any typical control exerted by independent business owners determining the most profitable way to operate.

The clients do have control in how they conduct themselves, how they follow instructions from the concession companies and whether they meet the standards set by the concession companies which directly affects any deductions against the maximum amount the charity can earn.

This factor is not applicable to the relationship between the clients and subject charity.
(See Ex D-7 for invoices and D-7.0 for tally, B-16.b).

Joint Employment: An employment relationship was not deemed to exist between New Beginnings and its' clients; therefore, it is not reasonable to discuss or assert a joint employment relationship between New Beginnings and the outside concession companies in regards to the volunteer service provided by its'

clients to the outside companies. Any additional review of outside entities determined to be necessary is not relevant to subject investigation.

Section 3d Employer:

Pastor Tom Atchison is the founder, owner, and controller of New Beginnings but with the exception of the inherent “business purpose” in the thrift stores, he is not functioning as an employer over the participants in his programs.

EXEMPTIONS:

Sec 213(a)(3) – This exemption was reviewed in regards to work performed by the volunteers in stadiums where they were also potentially individually subject to the FLSA as discussed in Coverage above. Because this exemption is location specific, it was reviewed for Raymond James Stadium (Tampa Bay Sports Authority), Amalie Arena (Tampa Bay Arena), and was attempted to be reviewed for Tropicana Field (Tampa Bay Rays). It was later confirmed that no volunteers from New Beginnings volunteered at Amalie Arena during the investigative period:

Raymond James Stadium (Tampa Sports Authority) (Ex E-1): The stadium is open 12 months per year for various events and based on final accounting data submitted, it appears the stadium meets the exemption. Any volunteer work performed by New Beginnings volunteers during the investigative period is exempt from the provisions of the FLSA.

The initial submission of data misrepresented the average receipts for the lowest 6 months as a percentage of the average receipts for the highest 6 months as reflected below:

Initial Data: 2012 46.5% 2013 58.18% EX 4

After additional discussion, it was determined that only a portion of the concession receipts had been included in the initial data. The accountant was advised that because it is an establishment exemption, the full amount brought in by the establishment needed to be included in the tally and negative numbers should not be included because the exemption is determined based on gross receipts and not on “losses”. The second submission was provided on December 17, 2014 and showed:

Second submission: 2012 11% EX 4

After several more discussions and review of various spreadsheets, the finalized data was provided on December 18, 2014 and shows:

Final submission: 2012 23.4% 2013 23.2% EX 4

Amalie Arena (Tampa Bay Arena) (Ex E-2): The arena is open 12 months per year for various events and based on accounting data submitted to date, it appears the arena does not meet the exemption. New Beginnings volunteers have not performed any work in this arena during the investigative period. The initial submission of data showed the average receipts for the lowest 6 months as a percentage of the average receipts for the highest 6 months as reflected below:

Initial Data: 2012 65.6% 2013 45.7% EX 4

After additional discussion, it was determined that only a portion of the concession receipts had been included in the initial data. The accountant was advised that because it is an establishment exemption, the full amount brought in by the establishment needs to be included in the tally and negative numbers should not be included because the exemption is determined based on gross receipts and not on "losses". The second submission was provided on December 12, 2014 and showed:

Second submission: 2012 33.5% 2013 37.4% EX 4

Because the second submission still contained negative numbers, the negatives were removed by WHI and the percentages provided to date reflect:

Adjusted by WHI: 2012 36.96% 2013 37.73% for 2013 EX 4

Tropicana Field (Tampa Bay Rays) (Ex E-3): The field is open 12 months per year for various events. Tampa Bay Rays EX 7 (C) represented on several occasions that he is the individual with the full data needed to provide monthly gross receipts for Tropicana Field and represented he underwent review and provided this same data to DOL in 1999 also in regards to the Section 213 (a)(3) exemption. Despite this and his initial verbal agreement to do so, he has failed to provide the data needed to review the potential application of the exemption for the current investigative period. Repeated requests were made via telephone beginning in early December 2014 and a face to face request was made of him 1/20/2015 but he advised WHI that this request has nothing to do with his organization and stated he had turned it over to his concessionaire who had reportedly already contacted USDOL.

After additional discussion, EX 7 (C) confirmed on 1/21/2015 that he had spoken with EX 7 (C), EX 7 (C) had refused to provide the data. An official, signed letter of request was then sent to EX 7 (C) of the Tampa Bay Rays by WHI on 1/22/2015 which resulted in a telephone discussion with EX 7 (C). Based on WHI understanding of the discussion with EX 7 (C), he has refused to turn over the requested documents because he claims there is no reasonable basis for a request; that an official request has not been made; that no explanation of what an official request would look like and/or information as to what the Tampa Bay Rays need from DOL in order to honor the request will be forthcoming; and that he cannot turn over confidential information 'as a member of major league baseball'. EX 7 (C) also insisted his official position be represented as "Not, not cooperating". WHI recommends subpoena and independent review in order to make an appropriate determination of exemption and application of the FLSA for any volunteers or employees working at Tropicana Field EX 4 for contemporaneous notes of discussion).

STATUS OF COMPLIANCE: EX 7 (E)

questions regarding the application of the FLSA to clients of New Beginnings of Tampa.

Section 206 - Minimum Wage: No violations found. Hours of work and pay were reviewed for two employees who voluntarily live in residences owned by New Beginnings and receive room and board as part of their wages. Section 3(m) reasonable cost was reviewed and was appropriately applied by the employer (Ex D-22, D-21, B-3, B-3.a, B-16, B-16.c, profile wk).

Section 207 - Overtime: No violations found.

Section 211 – Recordkeeping: No violations found.

Section 212 – Child Labor: No violations cited. No minors were employed nor did they volunteer (Ex B-2, B-3, B-6.a, B-11, B-17.a, B-18).

FMLA: New Beginnings is not subject to the FMLA as they do not employ the requisite 50 employees. Pastor Tom Atchison and Mr. Kevin Stabile were provided with a copy of Fact Sheet #28D: Employer Notification Requirements under the Family and Medical Leave Act and a poster at the initial conference on 12/4/2014.

DISPOSITION: The final conference was held via telephone February 2, 2015 with Pastor Tom Atchison, Founder. He was advised that no violations were found. With the exception of the thrift stores for which no coverage existed for clients during the investigative period, New Beginnings does not have an employment relationship with its clients in their volunteer work, including the volunteer work performed at stadium events. WHI and Pastor Tom Atchison reviewed the requirements of the Act, enforcement standards for work which is determined to have a business purpose, work performed that involves engaging an individual in interstate commerce as a regular part of their job duties (coverage), employment relationship, the standards of the FLSA Section 213(a)(3) exemption, and the requirements of the Act when an individual becomes subject. He began to demonstrate a working knowledge of these standards in several discussions as the investigation progressed and has agreed to full future compliance for any employment situations that arise.

Throughout the investigation, Pastor Tom Atchison provided all data requested and made himself and his organization fully available for review. He explained that he welcomed the evaluation of the program and said he had not really taken the time to review and to realize just how [numerically] successful their program has been until he found himself having to defend it. He explained he had just been all about doing the work and saving lives and he welcomed learning anything he needs to know to stay 100% compliant so he can continue to really get back to the purpose of his ministry.

He additionally provided documentation of ratings given to him by the Florida Department of Children and Families (*rating 83% & allegedly the highest in the state*) and by the Veterans Association documenting the program's success rate to show they are rated "exceptional" (**D-6.b, D-6.c**). He stated (*and Tampa Sports Service, concessionaire for Amalie Arena where the Lightning play confirmed with WHI via telephone they had no information showing New Beginnings had volunteered at all during the investigation period*) that New Beginnings has not volunteered in their concessions stands for probably more than 3 years. The \$50,000 award that was received by the charity in February of 2013 was not related to any of his clients volunteering at Tampa Bay Arena games. It was given simply because he was

nominated for and named as a Community Hero. The requirements include being a non-profit with highly regarded organizational and board leadership and in good financial standing; being representative of the cause for which the Lightning Community Hero was nominated; demonstrating fiscal responsibility and long term sustainability of programs; having a track record of quality service delivery and demonstrated results; the degree to which the Hero has been a catalyst for a cause that meets basic human needs or enriches the lives of others; the degree to which the Hero has exhibited dedication and selflessness, going above and beyond, etc. A copy of the requirements is included as **EX 4**. The requirements do not include volunteering at Arena events.

A WH 56 was not provided as no back wages were due.

Pastor Tom Atchison and Kevin Stabile, Director, were given a Handy Reference Guide with all the pertinent SBREFA information during the initial conference on December 4, 2014. WHI reviewed and discussed this publication. They indicated the company does not have any current or pending 16B actions (**Ex C-1**).

Pastor Tom Atchison, Owner/CEO, agreed for New Beginnings of Tampa, Inc., that the business will continue to fully comply with all aspects of the FLSA in the future. Specifically, they will:

1. Continue to maintain records in accordance with Regulation 516;
2. Continue to guarantee at least Minimum Wage is received for all hours worked and subject to the FLSA;
3. Properly compute and pay the additional overtime due if any non-exempt employees work more than 40 hours in a week (hourly or non-exempt salaried employees);
4. Properly classify employees as salaried exempt or non-exempt if they begin to employ salaried workers; and,
5. Continue to comply with all Youth Employment standards.

Civil Money Penalty Recommendations:

Potential Section 6 & 7 CMPs were discussed with Pastor Tom Atchison and Kevin Stabile but are not applicable. They were advised at the initial conference that the potential of CMP assessment exists for monetary violations, even after the payment of back wages, that the decision is made at the supervisory level and that they will be advised in writing when a final determination has been made. No CMPs are

recommended as no violations were found.

Pastor Tom Atchison and Kevin Stabile were given: HRG, FLSA, 778,785, 541, CL 101, 516, FMLA HRG & Recordkeeping fact sheet, & Posters.

EX 5



 M. Huffer
Investigator

Tampa District Office
February 2, 2015