

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

VALENTINE CONTRACTORS, INC.,	:	
	:	
Appellant,	:	CASE NO. 14CVF-3012
	:	
vs.	:	JUDGE REECE
	:	
DIRECTOR, OHIO DEPARTMENT OF JOB	:	
AND FAMILY SERVICES,	:	
	:	
Appellee.	:	

**DECISION AND JUDGMENT ENTRY REVERSING THE DECISION OF
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER**

REECE, JUDGE

This is an appeal pursuant to R.C. 4141.26 from a February 19, 2014 Decision of the Unemployment Compensation Review Commission (the “Commission”).

I. FACTS

On February 25, 2013, the Director of the Ohio Department of Job and Family Services (“ODJFS”) issued a Decision affirming a determination that Appellant Valentine Contractors, Inc. (“Valentine Contractors”) is a successor-in-interest to Northern Valley Contractors, Inc. (“Northern Valley”) for purposes of unemployment compensation contribution rates for the years 2007 through 2010.

Appellant appealed to the Commission. On September 10, 2013, a hearing was held before a Hearing Officer of the Commission. The evidence was as follows.

Appellant presented the testimony of Evelyn Valentine. (Transcript, p. 6). On direct examination, Ms. Valentine testified that she is the sole shareholder and sole officer of Valentine Contractors. (T. 6-7). She identified corporate records showing that

Valentine Contractors was incorporated in 2005 and that she was the sole owner and officer. (T. 10-12). She testified that she had never been an owner or officer of Northern Valley. (T. 7). She stated that Valentine Contractors did not acquire any business or assets from Northern Valley and did not perform any of Northern Valley's contracts. (T. 7-8). She stated that Valentine Contractors is a union masonry company. (T. 8). She verified documents stating that Valentine Contractors did not hire away employees of Northern Valley, and that Valentine Contractors hired its employees out of the local union halls pursuant to the applicable collective bargaining agreements. (T. 9; Record, p. 215-216). She testified that employees who had been identified by ODJFS as having worked at both companies were union brick layers hired under the collective bargaining agreements. (T. 10).

In response to the Hearing Officer's questions, Ms. Valentine testified that her husband, James Valentine, was then retired, but had been a mason contractor and owner of Northern Valley. (T. 17). She stated that he does not work for Valentine, and only "stops in" at the office. (*Id.*).

On cross-examination, Ms. Valentine was asked about, but had no explanation for, a series of records relating to involvement of Mr. Valentine in Valentine Contractors. Wage reports showed that Valentine Contractors made two payments of \$10,000.00 each to Mr. Valentine in 2007 and 2008. (T. 21; R. 371, 374). Ms. Valentine was shown an agreement signed by Mr. Valentine on behalf of Valentine Contractors dated January 1, 2006 (T. 22; R. 459) and a collective bargaining agreement listing Mr. Valentine as a representative of management for Valentine Contractors (T. 22; R. 479). She was also questioned regarding an unemployment claim filed by Albert Disabatino in 2005

identifying his employer as “Jim Valentine” at Valentine Contractors and stating that “employer changed name from Northern Valley Contractors” and records reflecting that Mr. Valentine talked to the claim investigator on behalf of Valentine Contractors. (T. 24; R. 448).

The State presented an affidavit of Amy Bornman-Weber regarding the documents compiled in her investigation of this matter. (R. 355-357). The documents attached to the affidavit include quarterly wage statements reflecting that certain employees worked for both Northern Valley and Valentine. (R. 359-374). These documents reflect, for example, that 6 of the 14 employees who worked for Northern Valley in the fourth quarter of 2006 were among the 29 employees who worked for Valentine in the same quarter. Four of those 14 Northern Valley employees were among the 31 employees who worked for Valentine in the first quarter of 2007. (R. 363, 368, 369).

On February 19, 2014, the Commission rendered its Decision, finding that Appellant is a successor-in-interest to Northern Valley under R.C. 4141.24(F). (R. 487-490). The Commission stated:

The testimony and evidence presented establishes that all of the trade or business of the account of the transferor, Northern Valley Contractors, Inc., were transferred to Valentine Contractors, Inc. The facts indicate that Valentine Contractors Inc. purchased all of the assets that still controlled by James Valentine of Northern Valley Contractors, Inc. At the hearing, Ms. Valentine could not provide any specifics on daily operations or offer an explanation of the wage records provided by the ODJFS.

A review of the entire record in this matter establishes that Valentine Contractors Inc. is a successor-in-interest to Northern Valley Contractors, Inc. There was a transfer to Valentine Contractors Inc. of all of the trade or business of Northern Valley Contractors, Inc. As such, Valentine Contractors Inc. shall be held to assume all of the resources and

liabilities of the account of Northern Valley Contractors, Inc. (Decision, p. 2; R. 488).

On March 19, 2014, Appellant filed this appeal from the Commission's Decision.

II. STANDARD OF REVIEW

This Court must affirm the Order of the Commission if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 4141.26(D)(2).

III. THE COURT'S FINDINGS AND CONCLUSIONS

This appeal concerns whether Appellant acquired successor-in-interest status by operation of law. R.C. 4141.24(F) reads in part:

If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

Under the Ohio Administrative Code, a transferee is a successor-in-interest by operation of law where: "(1) [t]here is a transfer of all of the transferor's trade or business located in the state of Ohio; and (2) [a]t the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code." Ohio Adm. Code 4141-17-04(A)(1) and (2). The Ohio Administrative Code also states that for the purposes of R.C. 4141.24, an employer's "'trade or business' includes all real, personal and intangible property *integral to* the operation of the trade or business, and may include the employer's workforce as applicable." (Emphasis added.) Ohio Adm. Code 4141-17-01(A).

In *Resource Title National Agency, Inc. v. Ohio Dept. of Job & Family Services*, 10th Dist. No. 14AP-39, 2014-Ohio-3427, ¶¶14-18, the Court of Appeals applied the above statutory and code provisions and held that a party is a successor-in-interest under R.C. 4141.24(F) when there has been a transfer of all of the property "integral" to the business.

The Court affirmed a finding that a party was a successor-in-interest where it acquired nearly all of the business's tangible and intangible assets, kept most of the employees, remained at the same location, and used the existing processes and workflow. (*Id.*, ¶14). The Court noted that the seller filed a "change in status" form that did not list any assets being retained. (*Id.*, ¶15). The Court held that a failure to transfer liabilities is not relevant in determining successor-in-interest status. (*Id.*, ¶16). *See also Hampton's on King, Inc. v. Ohio Department of Job & Family Services*, 10th Dist. No. 14AP-243, 2014-Ohio-5666.

The record does not contain reliable, probative and substantial evidence that Northern Valley transferred to Valentine Contractors all of its trade or business or all of the real, personal and intangible property integral to the operation of the trade or business. As noted, Ms. Valentine, the only witness at the hearing, testified that Valentine Contractors did not acquire any business or assets of Northern Valley and did not perform any of Northern Valley's contracts. She testified that Valentine did not hire away employees of Northern Valley, but hired union employees pursuant to the collective bargaining agreements.

The State did not present evidence of any specific property, assets, or business transferred by Northern Valley to Valentine Contractors. With respect to employees, the evidence was that a relatively small proportion of Valentine's employees in the fourth quarter of 2006 and first quarter of 2007 had previously worked for Northern Valley.

The State did present evidence that, contrary to the testimony of Ms. Valentine, Mr. Valentine was involved in the business of Valentine Contractors, as he received payments from, and signed certain contracts for, the business. However, evidence that

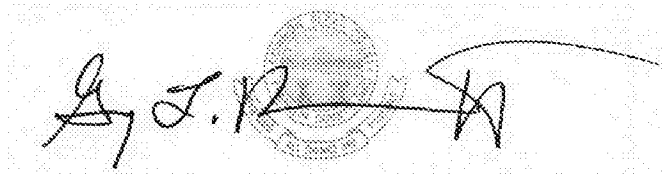
Mr. Valentine was involved in some manner in both Northern Valley and Valentine Contractors does not establish that Northern Valley transferred to Valentine Contractors all of its trade or business or all of the real, personal and intangible property integral to the operation of the trade or business.

After reviewing the record, the Court finds that the Commission's Decision is not supported by reliable, probative, and substantial evidence. Accordingly, the Commission's Decision is hereby REVERSED. This is a final, appealable Order. Costs to Appellee.

Franklin County Court of Common Pleas

Date: 01-09-2015
Case Title: VALENTINE CONTRACTORS INC -VS- OHIO DEPT JOB & FAMILY SERVICES DIRECTOR
Case Number: 14CV003012
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "G. L. Reece, II", is written over a circular, embossed seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 14CV003012

Case Style: VALENTINE CONTRACTORS INC -VS- OHIO DEPT
JOB & FAMILY SERVICES DIRECTOR

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0030122014-04-1599980000
Document Title: 04-15-2014-MOTION TO EXTEND TIME
Disposition: MOTION RELEASED TO CLEAR DOCKET