

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

Ohio Department of Job and Family Services	:	
	:	CASE NO. 15 CV 2983
Appellant,	:	
	:	JUDGE KIMBERLY COCROFT
-vs-	:	
	:	
Ashland Scale Company, Inc.	:	
	:	
Appellee.	:	

DECISION AND ENTRY

COCROFT, JUDGE

This matter comes before this Court upon the appeal of Appellant, Director, Ohio Department of Job and Family Services (ODJFS), from a Decision of the Unemployment Compensation Review Commission (“Review Commission”) in favor of Appellee, Ashland Scale Company, Inc. The decision was mailed on March 11, 2015. The Review Commission concluded that Appellee was not a successor in interest to Action Calibration Services, Inc. for purposes of determining Appellee’s unemployment contribution rate as an Ohio employer. R.C. 4141.24(F).

This Court will note Appellee is not represented by an attorney and did not file a brief pursuant to the case schedule. *K & Y Corporation v. Ohio State Liquor Control*, 2001 Ohio App. LEXIS 3591. Thus, pursuant to the holding in *Red Hotz, Inc. v. Liquor Control Comm’n*, 1993 Ohio App. LEXIS 4032, this Court will review the record and decide the case on its merits. The Court will note that several of the documents in this record are illegible. This problem was discussed during the February 2, 2015 hearing, but these documents were never replaced with legible versions.

As background, on May 2014, Joseph Ruland, the previous owner of Action Calibration Services, Inc. submitted a Disposition of Business form to ODJFS indicating he had sold Action Calibration Services, Inc. to Ashland Scale Company, Inc. on August 26, 2013. On July 5, 2014, ODJFS notified Appellee that it found Ashland Scale Company, Inc. to be the successor in interest to Action Calibration Services, Inc. The determination assigned contributions rates to Ashland Scale Company, Inc. of 6.40% for 2013 and 3.00% for 2014.

Ashland Scale Company, Inc. filed for review with the Review Commission. A hearing was held on February 2, 2015, which was after Appellee bought some, but not all, of Action Calibration Services Inc.'s property which was being held by the Internal Revenue Service (IRS). Ashland Scale Company, Inc. was represented by counsel and presented the witness testimony of Fred Gottfried. Attorney Megan Robinson appeared on behalf of ODJFS and gave testimony. On March 11, 2015 the Review Commission mailed a decision wherein it reversed the successor liability determination and found in favor of Appellee. ODJFS filed the appeal herein.

The Decision mailed March 11, 2015 includes the following Findings of Fact:

Fred Gottfried is the president of Ashland Scale Company, Inc. Ashland Scale Company, Inc. sells service and also rents scales, weighing equipment, and other measurement instruments.

Joseph Ruland was president of Action Calibration Services, Inc. Action Calibration Services, Inc. last employed workers in Ohio on August 25, 2014. Action Calibration Services and Ashland Scale Company, Inc. were business competitors.

On or about August 26, 2013, Mr. Ruland entered into an agreement in which he would provide services for Ashland Scales Company, Inc. as a consultant. The agreement was memorialized in a document that was signed by both Mr. Ruland and Mr. Gottfried, and which stated in part “[d]uring the term of this contract, Joseph Ruland and [sic] will not directly or indirectly contract or solicit business in Ohio, Indiana, of [sic] Michigan involving scales or gauges from any companies or competitors of Ashland Scales, except as directly representing Ashland Scales and the sole vendor.”

On September 25, 2013, Action Calibration Service, Inc. and Ashland Scales Company, Inc entered into an official Asset Purchase Agreement in which Ashland Scale Company, Inc agreed to buy 25 out of 40 listed lots of assets from Action Calibration Service, Inc contingent upon Ashland Scale Company, Inc receiving a Certificate of Discharge in its favor from the Internal Revenue Service for the 25 listed lots of assets specified in Exhibit 1 of the Asset Purchase Agreement. Mr. Ruland signed the Asset Purchase Agreement on behalf of Action Calibration Service, Inc, and Mr. Gottfried signed the Asset Purchase Agreement on behalf of Ashland Scale Company, Inc. Ultimately, Ashland Scale Company, Inc did purchase the 25 listed lots of assets specified in Exhibit 1 of the Asset Purchase Agreement. However, the remaining 15 lots of assets were not transferred by Action Calibration Service, Inc. to Ashland Scale Company, Inc. Action Calibration Service, Inc did not transfer all of its personal property to Ashland Scale Company, Inc.

For the second quarter of 2013, Action Calibration Service Inc had 3 employees

For the third quarter of 2013, Action Calibration Service, Inc had 3 employees. Of those 3 employees, one became an employee of Ashland Scale Company, Inc, and another (Joseph Ruland) either became an employee of Ashland Scale Company, Inc or an independent contractor who provided services for Ashland Scale Company, Inc.

March 11, 2013 Decision.

Although not labeled as an assignment of error, Appellant asserts the following in its brief:

B. The UCRC’s decision that Ashland Scale Company is not a successor-in-interest to Action Calibration Services under R.C. 4141.24(F) is not supported by reliable, probative and substantial evidence in the record and is not in accordance with law.

Appellant’s Brief, p.6.

Standard of Review

R.C. 4141.26(D) provides, in relevant part:

The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order *or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law.* (Emphasis added).

“Reliable evidence” is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. “Probative evidence” is

evidence that tends to prove the issue in question; it must be relevant in determining the issue. “Substantial evidence” is evidence with some weight; it must have importance and value. *Our Place v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, (1992). In reviewing the decision of the Review Commission, the Court may not weigh or judge the credibility of the witnesses. This Court must give due deference to the administrative resolution of evidentiary conflicts. *All Star Personnel v. State of Ohio*, 2006-Ohio-1302, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980); see also *Kathmandu, Inc. v. Bowland*, 1999 Ohio App. LEXIS 4499. Additionally, a reviewing Court must give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility. *Resources Title National Agency v. Ohio Dept. of Job & Family Services*, 2014-Ohio-3427.

Law and Analysis

Appellant argues that the items from Action Calibration Services, Inc. that did not transfer consisted of old, used junk parts, a refrigerator and the vehicles. It argues that Action Calibration Services, Inc. discarded the old, used junk parts, along with the refrigerator, and that the vehicles were repossessed by creditors.

Appellant asserts that Joe Ruland was hired to solicit business from Action Calibration Services, Inc.’s former customers and arrange new contracts with Appellant. Appellant bases its position that Appellee is a successor in interest, in part, on the Disposition of Business form wherein Mr. Ruland checked the box “sale” for the question explaining what portion of Action Calibration Services, Inc.’s (based in Ohio) business assets transferred to Appellant. Appellant also asserts that three of the employees employed by Action Calibration Services, Inc. in the third quarter of 2013 became employees or independent contractors who provided consulting services to Appellant. See Appellant’s Brief.

R.C. 4141.24(F) provides, in pertinent 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.

Additionally, O.A.C. 4141-17-04 describes a successor in interest by operation of law:

(A) The transferee shall become the successor in interest by operation of law where:

(1) There is a transfer of all of the transferor's trade or business located in the state of Ohio: and

(2) At the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code.

(B) The transferee, as successor in interest, shall assume all of the resources and liabilities of the transferor's account. The director shall revise the contribution rates of the transferee to reflect the result of the successorship.

(C) The director shall not approve a transfer of experience or contribution rates of the transferee or transferor for any contribution period with respect to which the director has determined contribution rates for the transferee or transferor pursuant to division (G) of section 4141.24 or section 4141.48 of the Revised Code.

This Court will address whether there is reliable, probative and substantial evidence to support the March 11, 2013 Decision. R.C. 4141.09 mandates that every employer in the state make contributions to the unemployment compensation fund. Furthermore, ODJFS must determine each employer's contribution or experience rate. There are three methods of acquiring status as a successor in interest. Two of those methods require both the predecessor employer and acquiring employer to submit an application for successor in interest status. The remaining method, the one that is applicable to this case, is obtaining successor in interest status by operation of law. R.C. 4141.24(F); O.A.C. 4141-17-04.

The March 11, 2015 Decision states as follows, in pertinent part:

In order for a transfer to occur under the first paragraph of Section 4141.24(F) O R C, the

transferring employer needs to transfer “all of its trade or business to another employer or person[]” Section 4141-17-01(A) O.A.C. indicates that “[t]rade 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.”

In this case, Action Calibration Service, Inc did not transfer all of its personal property to Ashland Scale Company, Inc. In regard to the 15 lots of assets of Action Calibration Services, Inc, ODJFS has not established that all of those 15 lots of assets were not integral to the operation of the trade or business of Action Calibration, Inc

The Director’s Reconsidered Decision, which was mailed on August 27, 2014, is reversed.

Ashland Scale Company, Inc is not a successor in interest to Action Calibration Services, Inc. This case is remanded to ODJFS to recalculate the rates for Ashland Scale Company, Inc for 2013 and 2014

This decision rules only on the issue set forth above.

March 11, 2015 Decision.

Mr. Fred Gottfried, President of Ashland Scale Company, Inc., testified on behalf of Appellee. A review of the record demonstrates that the nature of Ashland Scale Company, Inc’s business was selling, servicing, and renting equipment and other measure instruments for scaling and weighing. Tr. 5. Appellant bought some, but not all, of Appellee’s assets that were being held by the IRS because of Action Calibration Services Inc.’s nonpayment of taxes. Exhibits A, B, D and F. Joe Ruland, Action Calibration Services Inc.’s previous owner, was hired by Appellee as a consultant. Exhibit E.

Action Calibration Services Inc. was located in Toledo, Ohio and competed with Appellee for business. Tr. 9-10. Jared Wade, the hearing officer, asked Mr. Gottfried the following:

Q. Now you’re not operating out of those two locations in Toledo are you?

A. No, we removed the assets from them and they’re closed as far as I know.

Q. Now I just want to clarify, on the asset list it looks like you purchased certain assets

from the IRS. Now you didn't end up purchasing all the physical assets, did you?

A. No, I thought some of them were overpriced as listed so I made an offer on the list that the one exhibit dictates and it was accepted by the IRS. At that point, the IRS released the things that were left and I negotiated a different directly with Joe, it was \$8,000 to buy the balance of most of those assets, not all of them.

Q. So you didn't purchase all of the assets either from the IRS or Mr. Ruland?

A. No, there was somethings (sic) he kept himself.

Q. Now I had mentioned earlier, you did not change Ashland Scale's physical location, correct?

A. No, we brought the assets to our location.

Q. And you did not purchase any intangible property, did you?

A. No.

Q. You didn't purchase any licenses?

A. No.

Q. Contracts?

A. No.

Q. Customer files?

A. No.

Q. Customer lists?

A. No.

Q. So the customers were free to go elsewhere after the transaction, correct?

A. Correct.

Q. Now how many customers uh do you serve now that had formerly been Action Calibration customers?

A. Uh I would guess probably about to 25 to 30 we were able to acquire.

Q. Okay and that wasn't negotiated in the deal, the purchasing deal?

A. No, we had to go to them and request to bid their service.

Q. Okay, I want to talk a little about the employees. Do you know how many employees Action Calibration had before it closed?

A. My understanding from the papers I've seen there were six total at the time.

Q. And now how many employees did Ashland Scale have before this transaction?

A. Uh 19 or 20, I'm not sure exactly.

Q. Uh how many employees does it have now?

A. We are back to 19 or 20 because I did sell a different, another office in Toledo that I had, so we were up to about 25 or 26 and we dropped back down some.

Q. Now what Action Calibration employees came to work for Ashland Scale after the sale?

A. Uh Ken Ruland and David East both were hired by us. They filled out our applications, they were out of work at that point and we hired them to be service technicians and then as I said Joe Ruland was hired as a consultant, not on payroll just to, a consultant to try to acquire business for us.

Q. So they weren't automatically transferred over as employees, they had to apply?

A. No, we had to contact them. They filled out applications and did the drug screening as any other applicant would.

Q. So there was no guaranteed employment with you?

A. No.

Q. And their, they didn't have any of their benefits transferred, correct?

A. No.

Q. They didn't have their seniority transferred, correct?

A. No.

Q. Now are those employees that initially began working for you still working with you?

A. Uh just David East. Ken Ruland has left and Joe Ruland is still consulting.

Q. So of the approximately 20, 19 or 20 employees you had, only one or two are Action Calibration's employees?

A. Correct.

Tr. 10-13.

Furthermore, Mr. Gottfried testified on cross-examination as follows:

Q. Okay, do you have any idea what you didn't purchase in terms of physical assets?

A. Yeah on Exhibit F the last, all the pages except the first are the list the IRS gave me of assets and their price and in the column where they're numbered one through forty-some there's a check mark, those are the ones that I've purchased from the IRS. The other ones I did not have a list of what I bought from him. Basically it was most of what remained other than I know there were vehicles and some old, used junk parts that were obsolete that he disposed of and the refrigerator and some other stuff that I had no use for so I would say of the ones I didn't buy from the IRS, probably about half of the remaining equipment I bought at a lower price than the IRS had them at.

A. He did not sell me any customers lists or contract of any type or receivables or anything else, just the physical hardware.

Ms. Hall: I do want to clarify that um the disposition of business form was filled out uh months prior to the actual closing of the asset purchase agreement uh basically you did not purchase the assets until months after Mr. Ruland had filled out that disposition of business form, correct?

Mr. Gottfried: Correct.

Tr. 15-18.

The hearing officer concluded that Mr. Gottfried's testimony was credible as to the issues regarding the transfer of assets, employees, customers and any other indicia of successor in interest status between Action Calibration Services, Inc. and Appellee. The hearing officer concluded that Appellee was not a successor in interest based on the testimony and exhibits. The Disposition of Business form, relied on by Appellant, was completed by Joe Ruland on August 25, 2013 and thus, does not reflect the events that transpired subsequent to his filling out this form. The testimony of Mr. Gottfried, which was found credible by the hearing officer, conflicts with the information provided by Joe Ruland on this form. Additionally, Mr. Ruland did not testify at the hearing. Thus, Mr. Gottfried's testimony was not challenged with conflicting testimony.

The cashier's check from Appellee to the U.S. Treasury in the amount of \$41,475.00 is dated January 17, 2014, which is several months after Mr. Ruland completed the Disposition of Business form. The assets were released to Appellee after the IRS received Appellee's \$41,475.00 check. Tr. 8. The evidence demonstrates that the Disposition of Business form does

not accurately reflect the events that transpired between Action Calibration Services, Inc. and Appellee in the months after August 2013. Moreover, at the time that Mr. Ruland completed the Disposition of Business form in August 2013, the evidence clearly demonstrates that Appellee could not have bought all the assets from Action Calibration Services and completed a sale because many of the assets owned by Action Calibration Services, Inc. were being held by the IRS. Thus, there could not have been a sale of all of Action Calibration Services, Inc.'s assets to anyone in August 2013. The Disposition of Business form relied upon by Appellant reflects incorrect information and thus, does not accurately reflect what was transpiring at that exact point in time.

Upon review, this Court concludes, as a matter of law, that there is reliable, probative and substantial evidence to support the Review Commission's March 11, 2015 Decision. Additionally, the March 11, 2015 Decision is in accordance with law. Appellant did not meet its burden of proof. *Prime Kosher Foods, Inc. v. Bureau of Employment Services*, 35 Ohio App. 3d 121 (1987). Thus, Appellant's legal arguments are hereby **OVERRULED**.

DECISION

Accordingly, this Court concludes that the March 11, 2013 Decision is supported by reliable, probative and substantial evidence and is in accordance with law. The evidence supports the Review Commission's decision that Appellee is not a successor in interest. Thus, the March 11, 2013 Decision is hereby **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and

note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 07-22-2015
Case Title: OHIO STATE DEPARTMENT JOB FAMILY SERVICE -VS-
ASHLAND SCALE COMPANY INC
Case Number: 15CV002983
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 15CV002983

Case Style: OHIO STATE DEPARTMENT JOB FAMILY SERVICE -
VS- ASHLAND SCALE COMPANY INC

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes