

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stage Road Poultry Catchers, LLC,	:	
Petitioner	:	
v.	:	No. 2616 C.D. 2010
	:	Argued: June 6, 2011
Commonwealth of Pennsylvania,	:	
Department of Labor and Industry,	:	
Office of Unemployment Compensation,	:	
Tax Services,	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge (P.)**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE BROBSON**

FILED: December 29, 2011

Petitioner Stage Road Poultry Catchers, LLC, (Stage Road or the LLC) petitions for review of a final decision and order of the Department of Labor and Industry (the Department), dated November 9, 2010, which denied the LLC's petition for reassessment of unemployment compensation tax assessed by the Department's Office of Unemployment Compensation Tax Services (Tax Services).¹ We now reverse the Department's order.

Background

At the outset, we begin by noting that the LLC, prior to its incorporation, began as a collective group of individuals who came together in

¹ This matter was argued seriatly with *Stage Road Poultry Catchers v. Commonwealth of Pennsylvania, Department of Labor and Industry, Office of Unemployment Compensation, Tax Services*, docketed with this Court at 2615 C.D. 2010.

various joint ventures to provide poultry catching services. On or about December 15, 2007, the LLC formed as a Pennsylvania limited liability corporation, and members of the LLC entered into an Operating Agreement (the Operating Agreement). (Reproduced Record (R.R.) at 268a.) Pursuant to the Operating Agreement, the purpose of the LLC is “to provide administrative, business, management, marketing, and transportation services to its Catcher Members (the Catchers)] . . . , who will participate as members on a venture-by-venture basis” to provide poultry catching services to poultry growers or processors. (R.R. at 274a.)

The Operating Agreement provides that initially the LLC shall have two classes of members: Managing Members (Managers) and Catcher Members (Catchers). (R.R. at 280a.) Schedule A of the Operating Agreement identifies Jane Snook and her husband, John, and their four sons as Managers. (R.R. at 36a, 236a.) Schedule B of the Operating Agreement sets forth the identities of the Catchers.² (R.R. at 40a, 237a-44a.) Management of the LLC is vested with its Managers, who have the right to vote, may be required to provide capital if called upon by a majority of the Managers, and “may admit or discharge new Managers or Catchers” of the LLC. (R.R. at 280a.) Pursuant to Article Two, Section 2.3(g) of the Operating Agreement

A manager shall provide administrative, business, management, marketing, and transportation services to our Company’s Catchers, including, but not limited to, representing the Catchers to poultry growers; providing transportation to and from catching ventures; providing a fork lift with an operator whenever needed; collecting all amounts due and payable for catching services provided to growers; paying all expenses incurred in connection with each venture and the business; distributing net

² John and Jane Snook function as the “senior managers” of the LLC. (R.R. at 41a.)

profits attributable to each poultry catching venture as soon as feasible after each venture.

(R.R. at 277a.)

Catchers, on the other hand, neither have a right to vote nor may be required to provide capital, but they may participate in catching ventures as specified by the Operating Agreement. (R.R. at 280.) As to a Catcher's ability to participate in a catching venture, the Operating Agreement provides as follows:

Each Catcher who desires to participate in a catching venture must make a commitment to the Managers to participate in that venture and must actually show up at the venture site and perform catching services. Potential participants in a venture will be selected in the order of their commitments until the number of Catchers needed for the venture have committed. If a Catcher does not show up for a committed-to venture without prior notice of just cause to the Managers, the Catcher may participate in the next three ventures to which the Catcher commits only if an insufficient number of other Catchers commit.

Catchers are not precluded from engaging in poultry catching with persons not Catchers so long as doing so does not interfere with their participation in any venture of [the LLC].

(R.R. at 281a.)

Article Three, Section 3.4 of the Operating Agreement, relating to Members Not Employees, expressly provides that all services performed by the Catchers are as members and not as employees, as follows:

All services by any member of or on behalf of [the LLC] shall be performed as a member and not as an employee of [the LLC]. No member shall be entitled to any salary, wages, or other compensation from [the LLC], but for remuneration shall look solely to a share of net profits from each catching venture in which the member actually provides services.

(R.R. at 281a.) In addition, Article Two, Section 2.5(a), relating to Hiring or Discharging an Employee, makes clear that it is “understood that [the LLC] is not to have any employees.” (R.R. at 278a.)

The manner in which compensation shall be determined for Managers and Catchers is set forth in Article Five, Section 5.1(c) of the Operating Agreement, as follows:

A poultry catching venture’s net profits shall be equal to the gross receipts of the venture minus a guaranteed payment to the Managers. The Managers shall have the right to determine the amount of the guaranteed payment upon notice to the Catchers before they commit to the venture in which the guaranteed payment will apply. Initially, the guaranteed payment will be equal to \$0.06 per pound times the first 60,000 pounds of poultry caught plus \$0.003 per pound times every pound of poultry caught in excess of 60,000 pounds. The guaranteed payment to the Managers will be first applied to the expenses of the venture and the balance, if any, allocated to the Managers as the Managers’ share of the profits.

(R.R. at 285a.)

On January 11, 2010, Tax Services filed a notice of assessment against the LLC for distributions paid to the Catchers for poultry catching services performed from the first quarter of 2008 through the fourth quarter of 2008, based on Tax Services’ determination that the Catchers were employees of the LLC.³ The LLC petitioned the Department for reassessment on January 20, 2010, asserting that Tax Services improperly deemed the Catchers to be employees of the LLC.

³ The notice of assessment assessed \$77,886.93 in contributions, \$9,573.87 in interest, and \$1,000 in penalties. (R.R. at 197a.)

The Department conducted a fact-finding hearing for the reassessment petition on March 3, 2010, at 1:00 p.m., during which Jeffrey Frey, an unemployment compensation tax agent employed by Tax Services, Jane Snook, a general agent of the LLC, and Robert Church, the LLC's accountant, testified. The Department also accepted testimony given by those same individuals during a hearing held earlier that day, relating to tax assessments involving similar issues filed by Tax Services against a joint venture referred to as Stage Road Poultry Catchers (the Joint Venture), the predecessor to the LLC.⁴ (R.R. at 20a.)

Of particular relevance to the matters now before the Court, Mrs. Snook testified that, upon the advice of counsel, the Joint Venture formed into a limited liability company pursuant to the Operating Agreement. (R.R. at 29a.) As with the previous Joint Venture, Mrs. Snook testified that the LLC did not pay wages, salary, or any other set compensation to the Catchers, but that the LLC paid the Catchers an amount based on the number of pounds of chickens that they caught. (R.R. at 37a.) It did not issue W-2 Forms to report wages; instead, the LLC issued K-1 Forms. (R.R. at 39a.) Mrs. Snook also testified that that the Catchers provided the same services in the same manner to the LLC as they had to the predecessor Joint Venture. (R.R. at 42a-43a.) There was no difference between how the Catchers functioned with regard to the LLC or the Joint Venture. (*Id.*) Following this testimony, the parties agreed to include in the record the testimony and exhibits from the earlier hearing (the Joint Venture Hearing) relating to the assessments against the Joint Venture. (R.R. at 42a-45a.) The relevant

⁴ The hearing held earlier on March 3, 2010, related to notices of assessment filed on September 30, 2008, and January 11, 2010, by Tax Services against the Joint Venture for wages paid to its members for poultry catching services performed from the first quarter of 2004 through the fourth quarter of 2006, and from the fourth quarter of 2006 through the fourth quarter of 2008, respectively.

testimony from Joint Venture Hearing is summarized in our opinion in *Stage Road Poultry Catchers, LLC, v. Commonwealth of Pennsylvania, Department of Labor and Industry, Office of Unemployment Compensation, Tax Services*, ___ A.3d ___ (Pa. Cmwlth., No. 2615 C.D. 2010, filed December 29, 2011) (*Stage Road Poultry Catchers*).

By decision and order dated November 9, 2010, the Department's Executive Deputy Secretary issued a final decision of the Department, denying the LLC's petition for reassessment. In so doing, the Department made the following findings of fact:

1. Stage Road Poultry, LLC (Stage Road LLC) is the successor company to Stage Road Poultry Catchers (SRPC). (0010N.T. 17)
2. Stage Road LLC is a chicken catching business. (N.T. 66)
3. Processing plants own the chicken[s] and pay farms to feed and raise the birds. (N.T. 67)
4. Stage Road LLC is paid by the processing plants to catch the chickens at various farms. (N.T. 69)
5. Stage Road LLC issued an Operating Agreement of Stage Road Poultry Catchers, LLC. (0010 Exhibit P-1)
6. There are two types of members in the LLC: Class A members (managers) and Class B members (catchers). (0010N.T. 19-20)
7. There are six Class A members: John W. Snook, Jane E. Snook, Jason A. Snook, Jerry E. Snook, John W. Snook, Jr. and Joseph Snook (0010N.T. 21)

8. Mr. John W. Snook and Ms. Jane E. Snook are senior managers of Stage Road LLC. (0010N.T. 29)
9. Class A members provide services for Stage Road LLC, such as business management, marketing, transportation, paying all expenses and providing the necessary equipment. (N.T. 21)
10. Manager members do not catch chickens. (0010N.T. 21)
11. Catcher members are the chicken catchers. (0010N.T. 22)
12. The Operating Agreement provides for penalties for chicken catchers if the[y] fail to show for a job they agreed to work.
13. Catcher members do not have any decision-making ability. (0010N.T. 26)
14. Manager members have exclusive rights to manage Stage Road LLC. (0010 Exhibit P-1)
15. Manager members receive guaranteed payments from Stage Road LLC. (0010 Exhibit P-1)
16. The processing plants fax a schedule to Stage Road LLC with the job specifications. The fax contains the farms, the locations, the times and the chicken specification. (N.T. 72, 91)
17. The catchers are paid by Stage Road LLC based on the total weight of live chickens caught. (N.T. 69)
18. Stage Road LLC finds catchers through word of mouth and by the number of individuals who call looking for available work. Ms. Snook receives phone calls from the catchers asking about available work 24 hours a day, 7 days a week. (N.T. 74-75)

19. Since catching chickens does not require great skill, no specific training is required or provided. (N.T. 79)
20. The processing plants provide the trucks and cages to transport the chickens to the plants and provide a forklift when necessary for the job. (N.T. 70, 79)
21. There are different types of work to be performed depending on the particular farm. Service can vary between catching chickens, operating a forklift and loading crates into the trucks. (N.T. 77)
22. Stage Road LLC utilizes three 15-passenger vans to transport the catchers to the various farms. The vans are known as Snook 1, Snook 2 and Snook 3. The vans have pre-designated pick-up areas for the catchers. (N.T. 67, 76, 79-80, 92)
23. The processing plants pay Stage Road LLC to catch the chickens at various farms. The total payment for a job is agreed upon between Stage Road LLC and the processing plants and it is based upon a price per pound of live chicken[s] delivered to the plant. (N.T. 69)
24. *Different processing plants pay different rates to Stage Road LLC. The amount paid to Stage Road LLC is an agreed upon price per pound of live chickens negotiated between Stage Road LLC and the processing plants. (N.T. 82)*
25. After the job is complete, the processing plant sends Stage Road LLC a fax with the total pounds of chickens caught and the amount of money earned. (N.T. 109)
26. *The catchers' pay is directly affected by the number of catchers that are retained by Stage Road LLC to perform work on a specific job. (N.T. 76, 83)*

27. Stage Road LLC is responsible to pay for expenses, such as the van, gas and auto insurance. (N.T. 82)
28. If damages are incurred, Stage Road LLC is responsible to pay for the damages. (N.T. 108)
29. *A representative from Stage Road LLC records the names of the catchers performing the work to ensure proper payment. (N.T. 107)*
30. Stage Road LLC does not withhold taxes. (N.T. 84)

(Attached to Petitioner’s Brief as Exhibit “A” (emphasis added).) Based upon those findings, the Department determined that the Catchers were not free from direction and control in the performance of their work and relied upon a single employer (the LLC) for their work. As such, the Department concluded that the Catchers were employees of the LLC and not independent-contractors.

Analysis

On appeal to this Court,⁵ the LLC challenges the Department’s determination that the Catchers are employees of the LLC. First, the LLC argues that the Department’s findings of fact are not supported by substantial evidence of record. Specifically, the LLC challenges findings of fact numbers 24, 26, and 29, arguing that substantial evidence of record does not exist to support those findings. With the exception of identifying the putative employer as the LLC (as opposed to the Joint Venture), these finding are identical to findings of fact numbers 12, 15,

⁵ This Court’s standard of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 704. Whether an individual is an employee or an independent contractor is a determination of law subject to our review. *Applied Measurement Prof’ls, Inc. v. Unemployment Comp. Bd. of Review*, 844 A.2d 632, 635 (Pa. Cmwlth. 2004).

and 18, made by the Department in its decision and order dated November 9, 2010, relating to the petitions for reassessment filed by the Joint Venture. Second, the LLC argues, based upon the same reasoning it asserted in *Stage Road Poultry Catchers*, that the Department erred as a matter of law in determining that the Catchers were employees and not independent contractors excluded from employment under Section 4(l)(2)(B) of the Unemployment Compensation Law (Law).⁶

This Court adequately addressed all of the issues contained in this appeal in our opinion in *Stage Road Poultry Catchers*, filed this same date. We incorporate that opinion by reference and reach the same conclusions in this case.

Conclusion

For the reasons set forth above and in this Court's opinion in *Stage Road Poultry Catchers*, we reverse the order of the Department.

P. KEVIN BROBSON, Judge

⁶ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 753(l)(2)(B)

