STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT

MARVIN PERRY, IN HIS CAPACITY AS)
DIRECTOR OF THE DEPARTMENT OF)
LABOR AND TRAINING)

)

V.) W.C.C. 04-01929

)

DERCO, LLC, MICHAEL DERDERIAN,)
JEFFERY DERDERIAN)

DECISION

ROTONDI, J. This matter is before the Court pursuant to an order of remand directing the Hearing Officer of the Department of Labor and Training to consider two issues:

1. Whether the Derderians' status as managers of a limited liability company is within the meaning of the term "corporate officers" as set forth in R.I.G.L. §28-36-15, and

2. Whether the Derderians should then be fined.

After reviewing the issues, the hearing officer determined that:

1. That the Derderians status as managers of a limited liability company does not come within the meaning of the term "corporate officers" as set forth in R.I.G.L. §28-36-15.

2. Since the Derderians do not come within the meaning of the term "corporate officers" as set forth in R.I.G.L. §28-36-15, the Department has no jurisdiction to impose a penalty or fine against them individually, or in their capacities as members or managers of Derco, LLC.

The Director of the Department of Labor and Training appeals this decision. He (She) alleges that the hearing officer erred as a matter of law in his determinations that the status of Jeffery and Michael Derderian as managers of a limited liability company does not come within the meaning of "corporate officers" as set forth in R.I.G.L. §28-36-15 and that the Department, therefore, has no jurisdiction to impose a penalty or fine against them individually or in their capacity as members or managers of Derco, LLC.

For purposes of clarification, it is imperative that this court include a timeline. The following is a listing of the events that unfolded which precipitated these proceedings:

1. February 20, 2003 – Fire at the Station Nightclub Facility
2. March 5, 2003 - Complaint Sent
3. March 17, 2003 – Hearing Notice Sent
4. April 1, 2003 - Hearing before Department of Labor and Training
5. April 9, 2003 – Hearing officer's decision
6. July 31, 2003 – Statute amended (removes directors right of appeal)
7. August 4, 2003 – Order of remand entered by Judge Morin.
8. October 30, 2003 – Appellate Decree entered affirming case.
9. February 27, 2004 - Hearing officer's decision on remanded issue.
10. March 17, 2004 – Director's appeal from hearing officer's decision.

This court's authority to review administrative determinations is very limited. Generally, our review consists of "an examination of the certified

record to determine if there is any legally competent evidence therein to support the agency's decision." Barrington School Committee v. Rhode Island State Labor Board, 608 A.2d 1126, 1138 (R.I. 1992); See also, Rule 2.31(E), (as amended on February 23, 2004) of the Rules of Practice of the Rhode Island Workers' Compensation Court. With regard to statutory interpretation, in Labor Ready Northeast, Inc. v. McConaghy, (R.I. Supreme Court No. 02-698 June 4, 2004) the Rhode Island Supreme Court explicitly stated that "when an administrative agency interprets a regulatory statute that the General Assembly empowered the agency to enforce, a court reviewing the agency's interpretation of the statute as applied to a particular factual situation must accord that interpretation 'weight and deference as long as that construction is not clearly erroneous or unauthorized.'" 2002-698-M.P. at 6 (June 4, 2004), *quoting*, In re Lallo, 768 A.2d 921, 926 (R.I. 2001). Additionally, when

> "the provisions of the statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized. Id. at 7. This is true even when other reasonable constructions of the statute are possible. Id., *citing*, Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993.)"

Guided by these principles, I have carefully reviewed the record, the relevant statutes, as well as the hearing officer's decision and for the reasons hereinafter set forth, find a clear error in his statutory interpretation. Thus, the decision of the hearing officer is reversed and this court finds that Michael and Jeffery Derderian are severally personally liable for the fine previously assessed by the Department of Labor and Training.

The Rhode Island Supreme Court has been consistent regarding its policy for statutory interpretation. Where the language of a statute is "unambiguous and expresses a clear and sensible meaning, no room for statutory construction or extension exists, and we are required to give the words of the statute their plain and obvious meaning." Ellis v. RIPTA, 586 A.2d 1055, 1057 (R.I. 1991), *citing*, O'Neill v. Code Commission for Occupational Safety and Health, 534 A.2d 606, 608 (R.I. 1987). However, "if mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this court will look beyond mere semantics and give effect to the purpose of the act." Labbadia v. State, 513 A.2d 18, 22 (R.I. 1986).

In the present case, the respondents by inference have admitted that the Derco, LLC is liable and can be fined pursuant to R.I.G.L. §28-36-15 in a stipulation of facts executed March 31, 2003. The Appellate Division, in the binding opinion W.C.C. 03-03222 (2003), held that the hearing officer also had the right to assess penalties against corporate officers. The section of the statute at issue reveals, in relevant part:

> " in any case where the employer is a corporation, the president, vice president, secretary and treasurer of the corporation are also severally liable to the fine or imprisonment as provided under chapters 28-38 for the failure of that corporation to secure the payment of compensation; and the president, vice president, secretary and treasurer are severally personally liable, jointly with the corporation, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that corporation while it fails to secure the payment of compensation as required by those chapters" (2002-2003 Ed.)

Citing R.I.G.L. §§ 7-16-23 and 7-16-70 for support, on remand, the hearing officer determined that the intent of the legislature to harbor members or

managers of a limited liability company from such liability was clearly and unambiguously set forth.

The hearing officer's conclusion leads to an absurd result for a multitude of reasons. See Labbadia, 513 A.2d at 22. The most important of which is the fact that his decision completely contradicts the intent of the Workers' Compensation Act. It is a well established principle that the Workers' Compensation Act is to be construed liberally in order to effectuate its benevolent purpose. Brogno v. W & J Associates, Ltd., 698 A.2d 191, 194 (R.I. 1997). R.I.G.L. 28-36-15 clearly and unambiguously outlines the legislative intent to hold all employers civilly and/or criminally liable for their failure to secure compensation insurance. (2002-2003 Ed.). It also goes a step further and provides personal liability for those who would normally have been shielded yet held the responsibility for securing coverage i.e. corporate officers. Id. Additionally, the legislature provided a "catch-all" provision in its Limited Liability Company Act. R.I.G.L. § 7-16-73(a) states:

> "Unless the provisions of this chapter or the context indicate otherwise, each reference in the general laws to a 'person' is deemed to include a limited liability company, and each reference to a 'corporation,' except for references in the Rhode Island Business and Nonprofit Corporations Acts and except with respect to taxation, is deemed to include a limited liability company."

Following this provision, the relevant part of R.I.G.L. §28-36-15 would read

> "in any case where the employer is a *limited liability company*, the president, vice president, secretary and treasurer of the *limited liability company* are also severally liable to the fine or imprisonment as provided under chapters 28-38 for the failure of that *limited liability company* to secure the payment of compensation; and the president, vice president, secretary and treasurer are severally personally liable, jointly with the *limited liability company*, for any compensation or other

> benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that *limited liability company* while it fails to secure the payment of compensation as required by those chapters" (2002-2003 Ed.)

Limited liability companies do not have "corporate officers", i.e. a president, vice president, secretary and treasurer. They have "managers" who essentially perform the same functions as corporate officers.[1] To shield managers from liability because they do not hold the same titles as corporate officers, in this instance, would shield them not only from personal liability for the fine but also from personal liability for the compensation or other benefits "with respect to any injury which may occur to any employee of that *limited liability company* while it fails to secure the payment of compensation as referred by those chapters." See R.I.G.L. §28-36-15. This is an absurd result. The legislature never intended to emasculate the requirement of providing worker's compensation insurance coverage by allowing individuals to shield themselves from personal liability by forming limited liability companies such as Derco, LLC. (Dicta, Bench Decision, W.C.C. 03-3222 at 52.) What is often implicit is not always explicit. The Legislature has been consistent and unyielding throughout the years in its firm commitment that employees in the State of Rhode Island be afforded the protection of financial and medical coverage as a result of injuries suffered in the workplace. It is the opinion of this court that

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[1] R.I.G.L. 7-1.1-44(b) provides that "all officers and agents of the corporation…have the authority and perform any duties in management of the corporation that may be provided in the by laws, or may that be determined by resolution of the board of directors, subject to any limitations on the authority contained in the by laws."

R.I.G.L. 7-16-2(15) defines manager "as a person or persons designated by the members of a limited liability company to manage the limited liability company. "

the legislature in its wisdom would not create a legal entity that would be absolved of its responsibility to maintain workers' compensation coverage for its employees.

The hearing officer's reliance on 7-16-23 and 7-16-70 is also misplaced. 7-16-23 entitled "Liability of members or managers" reads

> "a member or manager of a limited liability company is not liable for the obligations of the limited liability company solely by reason of being a member or manager."

It is well settled that if the language of a statute is clear "no room for statutory construction or extension exists, and we are required to give the words of the statute their plain and obvious meaning." O'Neil v. Code Commission for Occupational Safety and Health, 534 A.2d 606, 608 (R.I. 1987). "Solely", as defined by Merriam-Webster, means either "without another" or "to the exclusion of all else." "Solely." *Merriam-Webster Online Dictionary*. 2004. http://www.merriam-webster.com (9 July 2004). The liability of the respondents under 28-36-15 was not based on their status as managers or members of the limited liability company "to the exclusion of all else" but rather on their duty as the managers of Derco, LLC to secure worker's compensation coverage. Thus, R.I.G.L. 7-16-23 does not apply to the facts of this case.

With regard to R.I.G.L. 7-16-70, it states that

> "a member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except for an action brought under §7-16-56 and except where the object is to enforce a member's right against or liability to the limited liability company."

Within itself, the Limited Liability Company Act clearly and unambiguously makes a distinction between the roles of members and managers as well as their liabilities. See R.I.G.L. §§ 7-16-1 through 7-16-75. Where the members are the managers, they are "deemed to be managers" for the purpose of applying the chapter, "unless the context clearly requires otherwise," and "each of the members is subject to all the duties and liabilities of a manager." R.I.G.L. 7-16-14. Consequently, when construing statutes within the Limited Liability Act, we uphold the maxim *expressio unius est exclusion alterius*, i.e. the mention of one is exclusion of another. See Orthopedic Specialists, Inc. v. Great Atlantic & Pac. Tea Co., Inc., 388 A.2d 352, 354, 120 R.I. 378, 382 (1978). Therefore, the protections of R.I.G.L. §7-16-70 are available only to the members of limited liability companies and the respondents' status as managers excludes them from such categorization. Id.

This court must note that the legislature enacted an additional amendment to R.I.G.L. §28-36-15 on July 2, 2004 by way of Public Laws 2004, ch. 293, §4. This amendment changes the statute to explicitly include members or managers of limited liability companies and general and limited partners. Id. In their supplemental memorandum, the respondents argued that the enactment of these changes amount to a legislative acknowledgement that the prior language did not extend to the members or managers of a limited liability company. (Res. Supp. Memo at 3). However, this court finds

that the amendment merely clarified the ambiguity that existed within R.I.G.L. §28-36-15.

In general, when a legislative amendment is enacted there is a presumption that the provisions added by the amendment were not included in the original act. 1A Sutherland Statutory Construction §22:30 (6th ed.).

> However, the time and circumstances surrounding the enactment of the amendment may indicate that the change wrought by the amendment was formal only—that the legislature intended merely to interpret the original act. If such is the case, the matter in that amendatory act may be looked into in order to determine what rights existed under the original act. Id.

Additionally, in Hometown Properties, Inc. v. Fleming, 680 A.2d 56 (R.I. 1996) the Rhode Island Supreme Court acknowledged that "when a statutory provision is amended, the General Assembly is assumed to have intended to accomplish some purpose thereby, such purpose may be the clarification--rather than the alteration--of the original enactment." 680 A.2d 56, 62 (R.I. 1996), *citing*, Gonsalves v. City of West Haven, 232 Conn. 17, 24, 653 A.2d 156, 159-60 (1995). It would be hard for this court to ignore the time and circumstances surrounding the enactment of Public Laws 2004, ch. 293, §4 because the issue of the ambiguity arose with this highly publicized case. The legislature's response to the ambiguity, however, was immediate. Therefore, this court finds that Public Laws 2004, ch. 293, §4 was enacted to clarify the legislative intent in R.I.G.L. §28-36-15 and as such only supports this court's prior findings.[2]

[2] The Rhode Island Supreme Court stated that "When a subsequent amendment serves to clarify, rather than to change, the amended statute, the amendment is entitled to great weight in construing the preamendment version of the law. Fleming, 680 A.2d at 62.

For all the above stated reasons, this Court finds that the hearing officer erred as a matter of law and pursuant to Rule 2.31(E) (as amended on February 23, 2004) of the Rhode Island Workers' Compensation Court Rules of Procedure the order from the Department is reversed. It should be noted that this matter need not be referred back to the Department of Labor and Training because it does not involve any further questions or determinations of fact.

Based on the foregoing, I find that:

1. The hearing officer committed a clear error of law in his finding that the status as manager of a limited liability company does not come within the meaning of the term "corporate officers" as set forth in R.I.G.L. §28-36-15.

2. "Managers" of Limited Liability Companies fulfill the role of "corporate officers" within their organization and as such can be held personally liable for the administrative penalty pursuant to the provisions of R.I.G.L. §28-36-15.

3. The respondents, Jeffery and Michael Derderian, are the "managers" of Derco, LLC for the purpose of liability under the provisions of the Limited Liability Company Act.

4. Jeffery and Michael Derderian can be held personally liable for the administrative penalty pursuant to R.I.G.L. §28-36-15.

It is, therefore, ordered:

1. Jeffery Derderian be held severally personally liable for the administrative penalty of One Million Sixty-six Thousand ($1,066,000.00) Dollars as assessed by the hearing officer in LOI No: 03-07 on April 9, 2003.

2. Michael Derderian be held severally personally liable for the administrative penalty of One Million Sixty-six Thousand ($1,066,000.00) Dollars as assessed by the hearing officer in LOI No: 03-07 on April 9, 2003.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

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V.) W.C.C. 04-01929
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DERCO, LLC, MICHAEL DERDERIAN,)
JEFFERY DERDERIAN)

D E C R E E

This cause came on for trial and upon trial thereon and in consideration thereof, the following findings of fact are made:

1. The hearing officer committed a clear error of law in his finding that the status as manager of a limited liability company does not come within the meaning of the term "corporate officers" as set forth in R.I.G.L. §28-36-15.

2. "Managers" of Limited Liability Companies fulfill the role of "corporate officers" within their organization and as such can be held personally liable for the administrative penalty pursuant to the provisions of R.I.G.L. §28-36-15.

3. The respondents, Jeffery and Michael Derderian, are the "managers" of Derco, LLC for the purpose of liability under the provisions of the Limited Liability Company Act.

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Entered as the decree of this Court this day of

ENTER: PER ORDER:

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Rotondi, J.

I hereby certify that copies were mailed to Bernard Healy, Esq., Thomas Dickinson, Esq., Kathleen Hagerty, Esq., and Jeffrey Pine, Esq. on

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