

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 16TH JUDICIAL CIRCUIT  
MACOMB COUNTY

C & L LEASING COMPANY  
Appellant,

v

Case No. 02-4341-AE

STATE OF MICHIGAN, DEPARTMENT  
OF CONSUMER AND INDUSTRY  
SERVICES, BUREAU OF WORKERS'  
& UNEMPLOYMENT COMPENSATION,  
Appellee.

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Unemployment Compensation

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OPINION AND ORDER

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

C & L LEASING COMPANY,

Appellant,

vs.

Case No. 02-4341-AE

STATE OF MICHIGAN, DCIS,  
BUREAU OF WORKERS' &  
UNEMPLOYMENT COMPENSATION,

Appellee.

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OPINION AND ORDER

This matter is before the Court on an appeal from June 28, 2002 and August 21, 2002 administrative decisions.

I.

The sole issue is whether Appellant qualifies as an Employee Leasing Company ("ELC") under *Rule 421.190 of the Michigan Administrative Code*. In pertinent part, *R 421.190* provides that:

(1) As used in this rule:

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(d) "Employee leasing company (ELC)," also known as a "professional employer organization," means an independently established business entity that does all of the following:

(i) Provides employees to a client entity.

(ii) Pays the wages of the employees.

(iii) Reports and withholds applicable taxes from the wages of the employees.

(iv) Administers the benefits for the employees.

(v) Provides other payroll, human resources, and other management assistance services that are agreed upon with its client entity.

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(2) An ELC that meets the requirements of section 41 of the

act is a liable employer and responsible to pay unemployment taxes on the employees leased to the client entity. For unemployment tax purposes in Michigan, the ELC, and not the client entity, is the employer of the leased employees if all [emphasis added] of the following conditions are met:

(a) An employing entity representing itself to be an ELC shall comply with the requirements of this rule to be considered by the agency to be an ELC for purposes of the act and this rule. If the agency determines the entity is not an ELC within the meaning of this rule, then the payroll of workers at the client entity and the client entity's prior experience rating will be reinstated.

(b) The ELC shall administer all payroll and all benefit services for the client entity, pay the wages of the workers, and have the right, both in contract and in fact, to hire, promote, reassign, discipline, and terminate the leased workers. The ELC cannot delegate the rights to the client entity. The client entity's officers may be considered employees of the leasing company when they are acting as operation managers, or performing services, for the client entity.

(c) The ELC retains the right to exercise direction and control over the daily activities of the workers or can delegate the right to the client entity.

(d) Neither the ELC nor any individual owner of the ELC, nor owners of the ELC in aggregate, has an ownership interest of more than 20% in the client entity, including the client entity's subsidiaries and affiliates, and the client entity does not have more than 20% ownership interest in the ELC.

(e) Neither the ELC nor any individual owner or other employee of the ELC has direct or indirect control over the client entity.

(f) The ELC does not limit itself to providing services and employees to any 1 client entity, including that entity's subsidiaries and affiliates, but holds itself out to the public in general as available to provide leasing services. The ELC shall not be a captive provider of employee services.

## II.

At the administrative hearing, Linde Myers ("L. Myers") testified that she is Appellant's Secretary/Treasurer, that she held such positions in 1999, and that she was President/Treasurer in 1998. *Tr. at 13-15*. Myers conceded that in 1998, her husband, Darryl Myers ("D. Myers"), was designated as the Secretary on company documents, although she could not personally recall whether he had been an officer. *Id. at 15*. She

indicated that Appellant performed payroll services and provided employees to other companies. *Id. at 16*. In this regard, she testified that Appellant provided employees for Michigan Awning in 1998 and 1999 and also began to provide employees for Panel Laminations in 2000. *Tr. at 16*. Although she attempted to expand the business, Appellant had no clients other than Michigan Awning and Panel Laminations. *Tr. at 16-17*. However, there were no employees available to lease out to any other companies. *Tr. at 52*.

L. Myers also testified that her father, Joseph Cass ("Cass"), is the "100 percent owner" of Appellant. *Tr. at 4*. Likewise, Cass indicated that he is Appellant's sole owner and President. *Tr. at 69*. Cass further testified that he had served as resident agent for Michigan Awning. D. Myers stated that he had a 10 percent ownership interest in Michigan Awning and a 100 percent ownership interest in Panel Laminations. *Tr. at 62, 66*.

Moreover, L. Myers indicated that both Appellant and Michigan Awning were operated from her Clinton Township home and that Panel Laminations was run from a Warren location. *Tr. at 24*. She furnished Michigan Awning and Panel Laminations with safety guidelines *Tr. at 25*. However, her husband and his parents had day-to-day supervisory control over the subject employees. *Tr. at 29-30*.

During the administrative process, Appellee issued several decisions finding that Appellant failed to qualify as an ELC. In this regard, Appellee concluded that Appellant was in the business of providing payroll services, rather than of leasing employees.

III.

This Court may reverse Appellee's decisions only if it determines that they were contrary to law or were not supported by competent, material, and substantial evidence on the whole record. *MCL 421.38(1)*. After carefully reviewing the entire record, the Court is persuaded that Appellant is not entitled to relief.

To be eligible for ELC status, Appellant must satisfy all of the requirements under *R 421.190(2)*. However, the Court opines that Appellant has failed to do so. By way of example, the record reflects that Appellant does not in fact hire, promote, reassign, discipline, and terminate the leased workers, as mandated under *R 421.190(2)(b)*. Instead, D. Myers and/or his parents handle such matters. Further, the record demonstrates that Appellant does not hold itself out to the general public as available to provide leasing services, as required under *R 421.190(2)(f)*. Rather, a solicitation letter shows that Appellant represents itself to be in the business of providing payroll and administrative services. *Appellant's Exhibit #12*. Under these circumstances, the Court concludes that Appellee's decisions should not be disturbed. *MCL 421.38(1)*.

IV.

For the reasons set forth above, the present appeal is **DENIED**. Appellee's June 28, 2002 and August 21, 2002 decisions are **AFFIRMED**. In compliance with *MCR 2.602(A)(3)*, the Court finds that this decision resolves the last pending issue and closes the case.

**IT IS SO ORDERED.**

JMB/kmv  
DATED: \_\_\_\_\_

**MAR 11 2003**

**JAMES M. BIERNAT**

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JAMES M. BIERNAT, Circuit Judge

**A TRUE COPY**

**Carmella Sabaugh**  
COUNTY CLERK

BY *[Signature]*  
DEPUTY CLERK

cc: Amanda Afton Martin, Attorney at Law

✓ Jon M. DeHorn, Attorney at Law