

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2687768
WORLDWIDE DESTINATION SERVICES INC
PO BOX 20152
TAMPA FL 33622-0152

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-153395L**

ORDER

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determination dated September 22, 2010, is REVERSED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **June, 2011**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals
 MSC 345 CALDWELL BUILDING
 107 EAST MADISON STREET
 TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2687768
 WORLDWIDE DESTINATION SERVICES INC
 ATTN: DON FERLITA
 PO BOX 20152
 TAMPA FL 33622-0152

RESPONDENT:

State of Florida
 Agency for Workforce Innovation
 c/o Department of Revenue



PROTEST OF LIABILITY
DOCKET NO. 2010-153395L

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
 Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated September 22, 2010.

After due notice to the parties, a telephone hearing was held on March 17, 2011. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Collection Supervisor, appeared and testified. A Revenue Specialist II testified as a witness. The Joined Party did not appear.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue:

Whether services performed for the Petitioner by the Joined Party and other individuals working as telemarketers constitute insured employment pursuant to Sections 443.036(19), 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of the liability.

Findings of Fact:

1. The Petitioner, Worldwide Destination Services Inc., is a corporation which operated a travel business in Tampa beginning in approximately November 2005.
2. At some point in time the Petitioner contracted with Leisure Services LLC to market the Petitioner's travel packages. Leisure Services LLC was an out of state LLC and was not registered with the Florida Department of State until October 15, 2010. Worldwide Destination Services Inc. began closing the business in September or October 2010 and Leisure Services LLC took over the business to service the customer accounts.

3. During the time that Leisure Services LLC performed marketing services for Worldwide Destination Services Inc. the workers performed services at a call center located on the premises of Worldwide Destination Services Inc. Worldwide Destination Services Inc. paid Leisure Services LLC for the marketing services and in turn Leisure Services LLC paid the workers who performed the marketing services.
4. The Joined Party filed a claim for unemployment compensation benefits effective April 18, 2010. On the claim the Joined Party stated that he was last employed by Worldwide Destination Services Inc. from February 22, 2010, through April 13, 2010. The Agency for Workforce Innovation requested that the Department of Revenue conduct an investigation, for adjudication purposes only, to determine if the Joined Party was employed by Worldwide Destination Services Inc.
5. During the course of the investigation a Revenue Specialist II provided paperwork to be completed by both Worldwide Destination Services Inc. and by the Joined Party. Worldwide Destination Services Inc. replied to the paperwork stating "We have no record of this individual. We have never paid this individual for any services rendered." However, when the Revenue Specialist II contacted the Petitioner by telephone employees of the Petitioner stated that the Joined Party had previously worked in the phone room.
6. The Joined Party also responded to the paperwork and provided copies of his pay stubs. The pay stubs showed that the Joined Party was paid by Leisure Services LLC. Through the Florida Department of State the Revenue Specialist II determined that there was no company registered to do business in Florida by the name of Leisure Services LLC. The Revenue Specialist II placed telephone calls to the president of Worldwide Destination Services Inc. and was informed that he was not available. The Revenue Specialist II requested that the president return the calls. The calls were never returned by the Petitioner's president.
7. On September 22, 2010, the Department of Revenue issued a determination holding that the persons performing services as telemarketing are employees retroactive to February 21, 2010. The Petitioner filed a timely protest.

Conclusions of Law:

8. The testimony of the president of Worldwide Destination Services Inc reveals that the Joined Party did not perform services directly for Worldwide Destination Services Inc. and that he was not paid directly by Worldwide Destination Services Inc. Worldwide Destination Services Inc. contracted with Leisure Services LLC to provide the marketing services and the documentary evidence supports a conclusion that the Joined Party was paid by Leisure Services LLC.
9. At this time it cannot be concluded whether the Joined Party and other individuals performing services as telemarketers are independent contractors or employees. Leisure Services LLC was not a party to the determination and was not a party to the hearing.

Recommendation: It is recommended that the determination dated September 22, 2010, be REVERSED. It is recommended that the Department of Revenue be requested to conduct a new investigation to determine if the Joined Party and other individuals performing services for Leisure Services LLC are independent contractors or whether they are employees of Leisure Services LLC.

Respectfully submitted on April 19, 2011.



R. O. SMITH, Special Deputy
Office of Appeals