

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250**

PETITIONER:

Employer Account No. – 3124042
STEVE OELRICH CAMPAIGN
ATTN: JACQUELINE SCHALL
5200 NW 43RD ST STE 102-151
GAINESVILLE FL 32606-4484

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 0019 3444 08-01**

ORDER

This matter comes before me for final Department 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 it is held that the Joined Party filed a timely request for reopening of the hearing and that good cause is found for reopening the hearing. It is further ORDERED that the determination dated December 4, 2012, is REVERSED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabillite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this 2nd day of February, 2015.



Magnus Hines

Magnus Hines
RA Appeals Manager,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanendra Y. Barnes
DEPUTY CLERK

2.3.15
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the 3rd day of February, 2015.

Shanendra Y. Barnes
SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

DANIEL BRUNO
915 NW 1ST AVE APT 1708
MIAMI FL 33136

STEVE OELRICH CAMPAIGN
ATTN: JACQUELINE SCHALL
5200 NW 43RD ST STE 102-151
GAINESVILLE FL 32606-4484

DEPARTMENT OF REVENUE
WILLA DENNARD
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

MYRA TAYLOR
FLORIDA DEPARTMENT OF
REVENUE
TALLAHASSEE CENTRAL SERVICE
CENTER
PO BOX 6417
TALLAHASSEE FL 32314-6417

State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

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Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

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RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

PROTEST OF LIABILITY
DOCKET NO. 0019 3444 08-01

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated December 4, 2012.

After due notice to the parties, a telephone hearing was held on February 20, 2013. The Petitioner, represented by the Petitioner's candidate, Steve Oelrich, appeared and testified. A political consultant to the Petitioner and the Petitioner's campaign treasurer testified as witnesses for the Petitioner. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party did not appear. On June 25, 2013, the cause was remanded for an additional hearing. After due notice to the parties, a telephone hearing was held on July 30, 2014. The Petitioner's *Notice of Telephone Hearing Before Special Deputy* was returned by the Post Office undelivered. The Petitioner did not appear. The Joined Party appeared and testified. The Respondent was represented by a Department of Revenue Senior Tax Specialist.

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 campaign workers constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

Whether the Petitioner meets liability requirements for Florida reemployment assistance contributions pursuant to §443.036(19); 443.036(21); 443.1215, Florida Statutes.

Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 73B-10.035(18).

Whether a request for rehearing was filed by a party entitled to notice of an adverse determination within fifteen days after mailing of the recommended order to the address of record or, in the absence of mailing, within fifteen days after delivery of the order, pursuant to Florida Administrative Code Rule 73B-10.035(18).

Whether an appeal, motion, or request for review was filed by a party entitled to notice of an adverse determination within thirty days after the mailing of the Final Order to the address of record or, in the absence of mailing, within thirty days after delivery of the order, pursuant to Florida Administrative Code Rule 73B-10.035(22).

Findings of Fact:

1. The Petitioner was a principal campaign committee organized to support the campaign of Steve Oelrich for election to the United States Congress. The committee registered with the Federal Election Commission on January 27, 2012, under the name "Steve Oelrich for Congress." The Petitioner began campaign activities in March 2012 and ceased activities in August 2012, after the primary election.
2. The Petitioner did not utilize the services of any individuals that the Petitioner considered to be employees. The Petitioner relied upon volunteers and individuals considered by the Petitioner to be consultants to provide services for the campaign.
3. The Joined Party was an employee of the Florida Legislature and performed services as an aide to Steve Oelrich who, at the time, was a Florida State Senator. The Joined Party took a leave of absence from his employment with the Florida Legislature to assist Steve Oelrich in his campaign for election to the United States Congress.
4. The Petitioner engaged a political consulting firm, OSI Consulting, to provide campaign advisory services. The political consulting firm engaged the Joined Party to perform research and statistical analysis and to provide reports, charts, and graphs for the campaign. The Joined Party had previously performed similar services for the political consulting firm for other campaigns for public office.
5. There was no written contract or agreement with the Joined Party. The verbal agreement was that the Joined Party would be paid \$3,000 per month for consulting services.
6. The Joined Party provided consulting services, consisting of political research and statistical analysis, sign waving, and accompanying Steve Oelrich to campaign events. The Joined Party provided services from sometime in March 2012 until sometime in May 2012.
7. The Petitioner maintained a campaign office. The Joined Party attended some meetings at the campaign office and utilized maps located at the campaign office. The Joined Party performed some of the work from the campaign office and performed some of the work from other locations. When the Joined Party performed services from the campaign office he used the Petitioner's computer. When he performed services from other locations he used his own personal laptop computer.
8. The Petitioner did not provide training to the Joined Party and the Petitioner did not supervise his work. The Petitioner set deadlines for completion of research projects.
9. The Joined Party issued an invoice to the Petitioner, Steve Oelrich for Congress, dated April 9, 2012, for consulting services in the amount of \$667.42 and expenses in the amount of \$1,052.28 for a total due of \$1,179.70. The invoice was paid by the Petitioner. The Petitioner reported the Joined Party's compensation on a Form 1099.

10. The Joined Party issued invoices for consulting services and expenses to OSI Consulting dated April 29, 2012, for consulting services in the amount of \$3,000 and expenses in the amount of \$336.39, and on May 30, 2012, consisting of consulting services in the amount of \$2,709.68 for 28 days and expenses in the amount of \$452.20. The April 29, 2012, and May 30, 2012 invoices were paid by OSI Consulting, the political consulting firm, not by the Petitioner.
11. The Joined Party did not receive any additional compensation from the Petitioner or from OSI Consulting for providing services to Steve Oelrich for Congress.
12. The Joined Party filed a claim for reemployment assistance benefits effective October 14, 2012. When the Joined Party did not receive credit for his earnings paid by the Petitioner a *Request for Reconsideration of Monetary Determination* was filed and an investigation was assigned to the Department of Revenue to determine if the Joined Party performed services for the Petitioner as an employee or as an independent contractor.
13. Based solely on information provided by the Joined Party the Department of Revenue issued a determination dated December 4, 2012, holding that persons performing services for the Petitioner as campaign workers are employees and that the Petitioner was liable for payment of reemployment assistance contributions retroactive to April 1, 2012. The Petitioner filed a timely protest on December 17, 2012.
14. Pursuant to the protest filed by the Petitioner a telephone hearing was scheduled to be held on February 20, 2013. The Joined Party did not provide contact information for the hearing. Although the special deputy, Susan Williams, attempted to contact the Joined Party at a telephone number contained in the file documents, there was no answer and the special deputy left a voice mail message. The special deputy proceeded with the hearing by taking the testimony of the Petitioner and the Petitioner's witnesses. Approximately one hour after the beginning of the hearing the Joined Party attempted to contact the special deputy to be admitted to the hearing. The Joined Party was not allowed to participate. Following the hearing, a copy of the recording of the hearing was sent to the Joined Party and was received by the Joined Party.
15. On April 15, 2013, the *Recommended Order of Special Deputy* was mailed to all parties and was received by the Joined Party. The Order recommended that the determination dated December 4, 2012, be reversed. On or about April 30, 2013, the Joined Party mailed a *Petition to Rehear Testimony for the Recommended Order of the Special Deputy* to an unknown address. The Petition was not received by the Department of Economic Opportunity.
16. On May 21, 2013, the Department of Economic Opportunity issued a final *Order* in the absence of any exceptions to the Recommended Order, reversing the December 4, 2012, determination. The Joined Party filed a protest by mail postmarked May 29, 2013, enclosing a copy of the April 30, 2013, letter.
17. On June 25, 2013, the Department of Economic Opportunity issued a *Remand Order* setting aside the May 21, 2013, *Order* and remanding the case for a hearing to resolve the jurisdictional issues, and if those issues were resolved, to take additional testimony.
18. Pursuant to the *Remand Order* a *Notice of Telephone Hearing Before Special Deputy* was mailed to the last known addresses of all parties. The *Notice of Telephone Hearing Before Special Deputy* mailed to the Petitioner's last known address was returned by the Post Office undelivered. The special deputy, R. O. Smith, attempted to contact the Petitioner at the telephone number provided by the Petitioner for the February 20, 2013, hearing but there was no answer. The special deputy proceeded with the hearing and took the Joined Party's testimony.

Conclusions of Law:

19. Rule 73B-10.035(18), Florida Administrative Code, provides
(18) Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order

to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.

20. Rule 73B-10.035(19), Florida Administrative Code, provides:

(c) Any party aggrieved by the Recommended Order may file written exceptions to the Director or the Director's designee within 15 days of the mailing date of the Recommended Order.

21. The Joined Party's testimony reveals that he filed a *Petition to Rehear Testimony for the Recommended Order of the Special Deputy* within fifteen days of April 15, 2013, the date that the *Recommended Order of the Special Deputy* was mailed to all parties. Thus, the request for reopening the hearing was timely filed.

22. Although the Joined Party did not answer his telephone at the appointed time of the hearing he made a request to be admitted to the hearing before the hearing was concluded. Thus, it is found that there is good cause for an additional hearing.

23. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Reemployment Assistance Program Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.

24. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).

25. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987). In Brayshaw v. Agency for Workforce Innovation, et al.; 58 So.3d 301 (Fla. 1st DCA 2011) the court stated that the statute does not refer to other rules or factors for determining the employment relationship and, therefore, the Department is limited to applying only Florida common law in determining the nature of an employment relationship.

26. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.

27. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:

- (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.
- (2) The following matters of fact, among others, are to be considered:
 - (a) the extent of control which, by the agreement, the business may exercise over the details of the work;

- (b) whether or not the one employed is engaged in a distinct occupation or business;
 - (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
 - (d) the skill required in the particular occupation;
 - (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
 - (f) the length of time for which the person is employed;
 - (g) the method of payment, whether by the time or by the job;
 - (h) whether or not the work is a part of the regular business of the employer;
 - (i) whether or not the parties believe they are creating the relation of master and servant;
 - (j) whether the principal is or is not in business.
28. Comments in the Restatement explain that the word “servant” does not exclusively connote manual labor, and the word “employee” has largely replaced “servant” in statutes dealing with various aspects of the working relationship between two parties.
29. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1st DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1st DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often can not be answered by reference to “hard and fast” rules, but rather must be addressed on a case-by-case basis.
30. There was no written contract or agreement between the parties. The only evidence of an agreement is the Joined Party's testimony that it was agreed that he would be compensated at the rate of \$3,000 per month.
30. The Joined Party had prior experience working as a political consultant for other candidates for public office and was skilled in the areas of political research and statistical analysis. The Petitioner did not train the Joined Party nor supervise the Joined Party. The greater the skill or special knowledge required to perform the work, the more likely the relationship will be found to be one of independent contractor. Florida Gulf Coast Symphony v. Florida Department of Labor & Employment Sec., 386 So.2d 259 (Fla. 2d DCA 1980)
31. The Joined Party submitted an invoice or bill to the Petitioner for services performed during March 2012. The Joined Party submitted an invoice or bill to OSI Consulting for services performed during April and May 2012. Generally, employees do not submit invoices to their employers to receive payment for wages. Billing for services performed is usually a practice associated with independent contractors. No evidence was submitted to show that employee taxes were withheld from the pay or that any fringe benefits normally associated with employment relationships were provided. The Joined Party's earnings were reported on a 1099 form rather than on a W-2 form.
32. It is concluded that the services performed by the Joined Party for the Petitioner do not constitute employment. However, even if the Joined Party's services were performed in employment, it has not been shown that the Petitioner is liable for payment of reemployment assistance contributions. Without employer liability the Joined Party is not entitled to credit for wages earned.
33. Section 443.1215, Florida Statutes, provides:
- (1) Each of the following employing units is an employer subject to this chapter:
 - (a) An employing unit that:
 - 1. In a calendar quarter during the current or preceding calendar year paid wages of at least \$1,500 for service in employment; or

2. For any portion of a day in each of 20 different calendar weeks, regardless of whether the weeks were consecutive, during the current or the preceding calendar year, employed at least one individual in employment, irrespective of whether the same individual was in employment during each day.

34. The Joined Party's testimony and evidence reveals that he only invoiced the Petitioner for \$667.42 for consulting services and only received payment from the Petitioner for \$667.42 for services performed. The remaining \$1,052.28 received from the Petitioner was for documented expense reimbursements. Expense reimbursements are not remuneration for services performed as set forth in Section 443.1217, Florida Statutes. Thus, it has not been shown that the Petitioner paid "wages" of at least \$1,500 during a calendar quarter. The Joined Party testified that he began performing services for the Petitioner on an undetermined date in March 2012. The Joined Party's testimony establishes that he performed services for less than twenty weeks for the Petitioner and OSI Consulting combined. Thus, no evidence has been presented to show that the Petitioner established liability for payment of reemployment assistance contributions.

Recommendation: It is recommended that it be found that the Joined Party filed a timely request for reopening of the hearing. It is recommended that good cause be found for reopening. It is recommended that the determination dated December 4, 2012, be REVERSED.

Respectfully submitted on August 29, 2014.



R. O. Smith, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd ken z jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
August 29, 2014

Copies mailed to:
Petitioner
Respondent
Joined Party

DANIEL BRUNO
915 NW 1ST AVE APT 1708
MIAMI FL 33136

WILLA DENNARD
FLORIDA DEPARTMENT OF REVENUE
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: MYRA TAYLOR
PO BOX 6417
TALLAHASSEE FL 32314-6417

DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA

PETITIONER:

Employer Account No. - 3124042
STEVE OELRICH CAMPAIGN
ATTN JACQUELINE SCHALL
5200 NW 43RD ST STE 102
GAINESVILLE FL 32606-4486

**PROTEST OF LIABILITY
DOCKET NO. 2013-6279L**

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

REMAND ORDER

This matter comes before me for final Department Order.

The Joined Party has requested reopening of the case. Rule 73B-10.035, Florida Administrative Code, provides that the special deputy may rescind a recommended order for good cause and reopen the proceedings if a party did not appear at the hearing and an adverse recommendation was entered against the party. Rule 73B-10.035, Florida Administrative Code, further provides that such a request must be filed within the time limit permitted for filing exceptions to the Recommended Order. The Department must now determine whether the Joined Party is entitled to an additional hearing.

Accordingly, it is ORDERED that the order dated May 21, 2013, is set aside and the case is REMANDED for another hearing to resolve these jurisdictional issues. If the special deputy finds that the Joined Party filed a timely reopening request and the Joined Party had good cause for nonappearance, it would then be appropriate for the special deputy to allow cross-examination of the other parties and take evidence from the Joined Party. Upon conclusion of the hearing, the special deputy shall issue another Recommended Order based on the entire record of the case.

DONE and ORDERED at Tallahassee, Florida, this 25th day of June, 2013.



Altemese Smith

Altemese Smith
Bureau Chief,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

By U.S. Mail:

STEVE OELRICH CAMPAIGN
ATTN JACQUELINE SCHALL
5200 NW 43RD ST STE 102
GAINESVILLE FL 32606-4486

DANIEL BRUNO
915 NW 1ST AVE APT 1708
MIAMI FL 33136

DEPARTMENT OF REVENUE
ATTN: PATRICIA ELKINS - CCOC #1-4866
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: MYRA TAYLOR
P O BOX 6417
TALLAHASSEE FL 32314-6417

State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 3124042
STEVE OELRICH CAMPAIGN
ATTN JACQUELINE SCHALL
5200 NW 43RD ST STE 102
GAINESVILLE FL 32606-4486

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

PROTEST OF LIABILITY
DOCKET NO. 2013-6279L

ORDER

This matter comes before me for final Department 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 December 4, 2012, is REVERSED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this 21st day of May, 2013.



Altemese Smith
Altemese Smith,
Bureau Chief,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanetra Y. Barnes
DEPUTY CLERK

5.21.13
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the 21st day of May, 2013.

Shanetra Y. Barnes
SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

STEVE OELRICH CAMPAIGN
ATTN JACQUELINE SCHALL
5200 NW 43RD ST STE 102
GAINESVILLE FL 32606-4486

DANIEL BRUNO
915 NW 1ST AVE APT 1708
MIAMI FL 33136

DEPARTMENT OF REVENUE
ATTN: PATRICIA ELKINS - CCOC #1-4866
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: MYRA TAYLOR
P O BOX 6417
TALLAHASSEE FL 32314-6417

State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 3124042
STEVE OELRICH CAMPAIGN
ATTN JACQUELINE SCHALL
5200 NW 43RD ST STE 102-151
GAINESVILLE FL 32606-4486

**PROTEST OF LIABILITY
DOCKET NO. 2013-6279L**

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Altemese Smith,
Bureau Chief,
Reemployment Assistance Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated December 4, 2012.

After due notice to the parties, a telephone hearing was held on February 20, 2013. The Petitioner, represented by the Petitioner's candidate, appeared and testified. A political consultant to the Petitioner and the Petitioner's campaign treasurer testified as witnesses for the Petitioner. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. 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 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.

Whether the Petitioner meets liability requirements for Florida reemployment assistance contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

Findings of Fact:

1. The Petitioner was a principal campaign committee organized to support the campaign of Steve Oelrich for election to the United States Congress. The committee registered with the Federal Election Commission on January 27, 2012, under the name "Steve Oelrich for Congress." The Petitioner began campaign activities in March 2012 and ceased activities in August 2012, after the primary election.

2. The Petitioner did not utilize the services of any individuals that the Petitioner considered employees. The Petitioner relied upon volunteers and paid consultants to provide services for the campaign.
3. The Joined Party provided paid consulting services, consisting of political research and statistical analysis, for the campaign from March 2012 until May 2012. The Joined Party also provided volunteer services, such as sign waving and driving or accompanying the candidate to events. The Joined Party was previously employed by the Florida Legislature as an aide to the candidate.
4. The Petitioner hired a political consulting firm to provide campaign advisory services. The political consulting firm hired the Joined Party to perform research and statistical analysis and to provide reports, charts, and graphs for the campaign. The Joined Party had previously performed similar services for the political consulting firm for other campaigns.
5. The Joined Party was given deadlines for completion of research projects. The Joined Party did not have set hours for work. The Joined Party determined when his work was performed.
6. The Petitioner maintained a campaign office. The Joined Party attended some meetings at the Petitioner's office and utilized maps located at the Petitioner's office. The Joined Party was not required to perform his work at the Petitioner's office or any particular location. The Joined Party used his personal laptop in connection with the work.
7. The Petitioner did not provide training to the Joined Party or instruct the Joined Party as to how to perform the work. The Joined Party was not supervised.
8. The Joined Party could subcontract the work or hire others to assist him with the work.
9. The Joined Party was not restricted from performing similar services in other political races.
10. The Joined Party issued an invoice dated April 9, 2012, to the Petitioner in the amount of \$667.42 for consulting services and \$1,052.28 for expenses. The invoice was paid by the Petitioner. The Petitioner reported the Joined Party's compensation on a form 1099-MISC.
11. The Joined Party issued invoices for consulting services and expenses dated April 29, 2012, and May 30, 2012, in the amounts of \$3,336.39 and \$3,161.88, respectively, to "OSI Consulting," the political consulting firm. Those invoices were paid by the political consulting firm.

Conclusions of Law:

12. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Reemployment Assistance Program Law, is governed by Chapter 443, Florida Statutes. Section 443.1216(1)(a)2, Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.
13. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).
14. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987).
15. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.
16. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:

- (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.
- (2) The following matters of fact, among others, are to be considered:
 - (a) the extent of control which, by the agreement, the business may exercise over the details of the work;
 - (b) whether or not the one employed is engaged in a distinct occupation or business;
 - (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
 - (d) the skill required in the particular occupation;
 - (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
 - (f) the length of time for which the person is employed;
 - (g) the method of payment, whether by the time or by the job;
 - (h) whether or not the work is a part of the regular business of the employer;
 - (i) whether or not the parties believe they are creating the relation of master and servant;
 - (j) whether the principal is or is not in business.
17. Comments in the Restatement explain that the word "servant" does not exclusively connote manual labor, and the word "employee" has largely replaced "servant" in statutes dealing with various aspects of the working relationship between two parties.
18. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1st DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1st DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often cannot be answered by reference to "hard and fast" rules, but rather must be addressed on a case-by-case basis.
19. The record does not reflect the existence of an express agreement, written or verbal, between the Petitioner and the Joined Party for the Joined Party's services.
20. It was shown that the Joined Party had prior experience with political campaigns and was skilled and knowledgeable in the areas of political research and statistical analysis. The greater the skill or special knowledge required for the work, the more likely the relationship will be found to be one of independent contractor. Florida Gulf Coast Symphony v. Florida Department of Labor & Employment Security, 386 So.2d 259 (Fla. 2d DCA 1980).
21. In Adams v. Department of Labor and Employment Security, 458 So.2d 1161 (Fla. 1st DCA 1984), the court held that the basic test for determining a worker's status is the employing unit's right of control over the manner in which the work is performed. The court, quoting Farmer's and Merchant's Bank v. Vocelle, 106 So.2d 92 (Fla. 1st DCA 1958), stated: "[I]f the person serving is merely subject to the control of the person being served as to the results to be obtained, he is an independent contractor; if he is subject to the control of the person being served as to the means to be used, he is not an independent contractor."
22. It was not shown in this case that the Petitioner exercised control over the Joined Party as to the manner in which the work was performed. The Petitioner did not determine how the work was performed, when the work was performed, or where the work was performed. The Joined Party did not have set hours for work. The Petitioner did not supervise the Joined Party. The Joined Party could subcontract the work and could perform similar services in other political races. The Petitioner was concerned with the product or results of the Joined Party's work, rather than the means by which the Joined Party achieved those results.

23. The Joined Party billed for his services. No competent evidence was presented to show an express agreement as to the Joined Party's rate of compensation. Only one of the three invoices submitted for the hearing was directed to and paid by the Petitioner. The other two invoices were directed to and paid by a third party. The Petitioner reported the amount it paid to the Joined Party as non-employee compensation.
24. It is concluded that the services performed by the Joined Party for the Petitioner do not constitute insured work.
25. Section 443.1215, Florida Statutes, provides:
- (1) Each of the following employing units is an employer subject to this chapter:
 - (a) An employing unit that:
 1. In a calendar quarter during the current or preceding calendar year paid wages of at least \$1,500 for service in employment; or
 2. For any portion of a day in each of 20 different calendar weeks, regardless of whether the weeks were consecutive, during the current or preceding calendar year, employed at least one individual in employment, irrespective of whether the same individual was in employment during each day.
26. The record shows the Petitioner did not have an individual in employment. Accordingly, the Petitioner has not met liability requirements for the payment of reemployment assistance contributions.

Recommendation: It is recommended that the determination dated December 4, 2012, be REVERSED.

Respectfully submitted on April 15, 2013.



Susan Williams

SUSAN WILLIAMS, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
April 15, 2013

Copies mailed to:

Petitioner
Respondent
Joined Party

DANIEL BRUNO
915 NW 1ST AVE APT 1708
MIAMI FL 33136

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ATTN: PATRICIA ELKINS - CCOC #1-4866
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