

Crescent Remodeling Center

EMPLOYER-EMPLOYEE (RCW 51.08.070; RCW 51.08.180)

Home remodeling contractors

Entrepreneurs selling remodeling packages to homeowners are not "salesmen" employees of a remodeling center whose services they regularly use, where the entrepreneurs are under no obligation to use the remodeling center's services exclusively, and frequently contract with other remodeling centers, or hire their own labor to perform the installation of materials purchased from this or other suppliers. Neither the "right of control" test nor the "nature of the work" test for determining the existence of an employer-employee relationship is satisfied. ...*In re Crescent Remodeling Center*, BIIA Dec., 66,160 (1985) [special concurrence]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 In Re: CRESCENT REMODELING CENTER) DOCKET NO. 66,160
3)
4 Firm No. 176,429) DECISION AND ORDER
5)
6

7 APPEARANCES:

8
9 Employer, Crescent Building Materials, Inc., d/b/a
10 Crescent Remodeling Center, by
11 Dauber and Bartheld, per
12 Richard H. Bartheld

13
14 Department of Labor and Industries, by
15 The Attorney General, per
16 Laurie F. Connelly and Thomas R. Chapman, Assistants
17

18 This is an appeal filed by the employer on October 31, 1983 from
19 an order of the Department of Labor and Industries entered August 29,
20 1983, and communicated to the employer on September 1, 1983, which
21 affirmed a previous order dated January 18, 1983 which assessed
22 additional industrial insurance premiums due in the amount of \$4,691.08
23 for the audit period of July 1, 1980 through June 30, 1982. Reversed
24 and remanded.

25 DECISION
26

27 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is
28 before the Board for review and decision on a timely Petition for
29 Review filed by the Department of Labor and Industries to a Proposed
30 Decision and Order issued on August 21, 1984 in which the order of the
31 Department dated August 29, 1983 was reversed, and remanded to the
32 Department with instruction to relieve the employer of responsibility
33 for payment of premiums on behalf of the outside sales agents and
34 their contactors for the period July 1, 1980 through June 30, 1982.

35 The Board has reviewed the evidentiary rulings in the record of
36 proceedings and finds that no prejudicial error was committed and said
37 rulings are hereby affirmed.

38 The facts in this record, with respect to the issue of employer-
39 employee relationship between Crescent Remodeling Center and the
40 outside salesmen availing themselves of Crescent's services, are

1 adequately set forth and discussed in the Proposed Decision and Order
2 and will not be reiterated at length herein. However, we feel it
3 necessary to further discuss this issue in light of Lloyd's of Yakima
4 v. Department of Labor and Industries, 33 Wn.App. 745 (1982), and our
5 decision in Family Life Insurance Company, Board of Industrial Insurance
6 Appeals Docket No. 63,147, dated April 23, 1984.

7 As set forth in the Proposed Decision and Order, Crescent
8 Remodeling Center is in the business of selling material and services
9 for home remodeling. The company solicits business from homeowners,
10 providing a package deal which can include the materials, installation,
11 and financing. In addition, Crescent Remodeling Center provides this
12 package to private entrepreneurs who have contracted with a homeowner
13 for repairs or remodeling. It is these entrepreneurs that the
14 Department has classified as "salesmen" and for whom it alleges
15 premiums are due from Crescent.

16 In its Petition for Review the Department alleges that the
17 "salesmen" dealing with Crescent Remodeling Center come within the
18 rule of Lloyd's of Yakima, supra. The situation in Lloyd's is
19 virtually identical to that of Crescent when Crescent deals directly
20 with the homeowner. Lloyd's, as does Crescent, negotiated with a
21 customer for a package which included the materials, and installation.
22 (It is not known if Lloyd's also provided financing). After having
23 sold the package to the homeowner, Lloyd's contracted for the instal-
24 lation of the material with three independent workmen. The three
25 were primarily engaged in installing the material for Lloyd's, under
26 a verbal contract. The court found the three workmen to be employees
27 of Lloyd's on the ground that the "very heart and soul" of their
28 contract with Lloyd's was their personal labor. Clearly this rationale
29 would apply to those material installers who install the material for
30 Crescent Remodeling Center when Crescent sells its own package to a
31 homeowner. However, the so-called "salesmen" who deal with Crescent
32 actually do no more than stand in the place of the homeowner, when
33 they sell a package to the homeowner and then contract with Crescent

1 for its performance. The entrepreneurs are under no obligation to
2 have Crescent perform the contract, and the evidence indicates that in
3 fact these "salesmen" frequently contract with other remodeling
4 centers, or hire their own labor to perform installation of materials
5 purchased from Crescent or other suppliers. In those instances where
6 they do elect to use Crescent, it would appear that the description
7 of the relationship would be more that of prime contractor or seller
8 (entrepreneurs) and subcontractor or buyer (Crescent Remodeling Center).

9 In Family Life Insurance Company, supra, we held life insurance
10 sales agents to be employees of the insurance company, under a "nature
11 of work" test, as opposed to the concept of "control" in the contractual
12 relationship. Family Life Insurance Company exercised no control
13 over its outside salespersons, except a contractual requirement that
14 they not sell competing forms of insurance. In practical effect,
15 Family Life Insurance Company did control the nature of the work that
16 salespersons did, and accomplished its business through those sales-
17 persons. Crescent Remodeling Center, on the other hand, contracts
18 directly with homeowners and remodeling contractors as well as the
19 entrepreneurs here in question, and imposes no restrictions on these
20 entrepreneurs in dealing with competitors. The "salesmen" here in
21 question meet neither the "control" nor the "nature of work" test.
22 As stated in the Proposed Decision and Order, the relation between
23 Crescent and these sales agents could be called "one of buyer/seller
24 rather than employer/employee".

25 After consideration of the Proposed Decision and Order and the
26 Department's Petition for Review filed thereto, and a careful review
27 of the entire record before us, we are persuaded that the Proposed
28 Decision and Order is supported by the preponderance of the evidence
29 and is correct as a matter of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

The proposed findings, conclusions and order are hereby adopted as this Board's final findings, conclusions and order and are incorporated herein by this reference.

It is so ORDERED.

Dated this 7th day of March, 1985.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
MICHAEL L. HALL Chairman

/s/ _____
FRANK E. FENNERTY, JR. Member

/s/ _____
PHILLIP T. BORK Member

SPECIAL CONCURRING STATEMENT

I have signed the foregoing Board decision because I fully concur that the independent outside sales agents here in question were not "employees" or "workers" for Crescent Remodeling Center within the meaning and intent of those terms under the Workers' Compensation Act. Thus, I agree with the other Board members on the final disposition of this case.

However, I do not necessarily join in the discussion in the Decision, wherein my colleagues found it necessary to distinguish the result reached in this case from the result reached in Family Life Insurance Company, Docket No. 63,147, Board decision of April 23, 1984.

I dissented in the Family Life case because, for the reasons expressed in that dissent, I felt the independent insurance sales agents there were not "employees" or "workers" for Family Life Insurance Company.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

Thus, in Family Life, as here, the persons in question were not subject to the Act's mandatory coverage, and in my view we should not have had to "distinguish" that result from this one.

Dated this 7th day of March, 1985.

/s/ _____
PHILLIP T. BORK Member