

## **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