

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	
)	Order Affirming Insurer's Decision
STEVE'S ROOFING, INC.,)	
)	Commissioner File No. 70835
Appellant,)	
)	

This case is before the Commissioner of Insurance on remand from the Iowa District Court for Johnson County. On April 8, 2014, the district court remanded this cause with instructions to issue a decision as to whether the insurer properly classified Steve's Roofing, Inc.'s workers for purposes of applying the ratings system for insuring these workers.

Steve's Roofing, Inc. (Steve's Roofing) is the Appellant in this matter. After considering Steve's Roofing's March 8, 2011 request for appeal, the record of evidence admitted at the July 19, 2011 hearing, and all briefs submitted by Steve's Roofing and LM Insurance Corporation, the Commissioner issues the following Order Affirming the Insurer's Decision:

1. Steve's Roofing is an Iowa corporation engaged primarily in residential construction.
2. LM Insurance Corporation (Liberty Mutual) is an authorized insurer in the State of Iowa.
3. As a participant in the involuntary workers compensation coverage market, Steve's Roofing has been assigned coverage by Liberty Mutual.
4. This matter arose on March 8, 2011 before the Commissioner¹ when counsel for Steve's Roofing submitted a letter to the Commissioner "requesting a review of LM Insurance Corporation application of its rating system to" Steve's Roofing.
5. The Commissioner's jurisdiction in this matter is found in Iowa Code §515A.9, which provides:

¹ Nick Gerhart became commissioner of insurance on February 1, 2013, replacing Susan E. Voss. Throughout much of this proceeding Commissioner Voss had designated First Deputy Commissioner James Mumford as the presiding officer. The office will be referred to collectively as the "Commissioner" in this order.

Every rating organization and every insurer which makes its own rate shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by the person's authorized representative, on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the person. Such review of the manner in which a rating system has been applied is not a contested case under chapter 17A. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. Such appeal to the commissioner of the manner in which a rating system has been applied is not a contested case under chapter 17A.

6. The appeal to the Commissioner by Steve's Roofing was timely filed with the Commissioner.

7. On April 4, 2011, the Commissioner issued an Order Setting Proposed Scheduling Order. In this order notice was given for a hearing scheduled for June 30, 2011.

8. On July 14, 2011, the Commissioner issued an Order Regarding Hearing Procedure. The hearing was convened on July 19, 2011.

9. On July 19, 2011, counsel for Steve's Roofing appeared on behalf of its client. Liberty Mutual appeared by counsel. No other parties appeared.

10. Steve's Roofing offered Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. Exhibits 1 through 11 were received into evidence.

11. Liberty Mutual offered Exhibits A, B, C, D, E, F, G, H, I, J, K, L and M. Exhibits A through J, L and M were received into evidence. The objection of Steve's Roofing to the admission of Exhibit K is sustained.

12. Both Steve's Roofing and Liberty Mutual have been given full opportunity to submit materials, documents and testimony.

13. In determining whether the insurer properly classified Steve's Roofing's workers, the Commissioner relies on the case of *Iowa Mutual Insurance Co. v. McCarthy*, 572 N.W.2d 537 (Iowa 1997). In *Iowa Mutual Ins. Co.*, the Iowa Supreme Court set out the principles that guide the Commissioner's determination:

When the issue is whether an individual is an employee or an independent contractor, many factors are relevant. (*Citations omitted.*) In *Peterson* [*Peterson v. Pittman*, 391 N.W.2d 235 (Iowa 1986)], this court considered (1) who had the right to control the physical conduct of the work, (2) whether the purported employee was on the employer's payroll, and (3) who provided the equipment to accomplish the work. 391 N.W.2d at 238. In *Nelson*, [*Nelson v. Cities Serv. Oil Co.*, 146 N.W.2d 261 (Iowa 1966)], we considered the five-factor test, quoted above, for determining the existence of an employer/employee relationship, and eight additional factors bearing on the person's status as an independent contractor:

- (1) the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price;
- (2) independent nature of his business or of his distinct calling;
- (3) his employment of assistants, with the right to supervise their activities;
- (4) his obligation to furnish necessary tools, supplies, and materials;
- (5) his right to control the progress of the work, except as to final results;
- (6) the time for which the workman is employed;
- (7) the method of payment, whether by time or by job;
- (8) whether the work is part of the regular business of the employer.

... 146 N.W.2d at 264-65 (*Citation omitted*). And, in every case where the issue was whether the person was an employee or an independent contractor, the court weighed the parties' intention as it reflected upon the employment relationship.

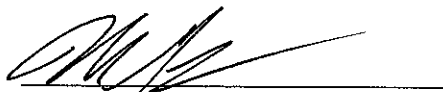
14. The Commissioner has considered the written contract signed by both Steve Fangman on behalf of Steve's Roofing and Adan Zungia, which was denominated as an "Independent Contractor Agreement." Yet, this contract is not conclusive. Further, its terms do not reveal "a contract for the performance by a person of a certain piece or kind of work at a fixed price." To the contrary it references compensation to be determined "on a job by job basis." Moreover, in evaluating the

intent of the parties to this contract, the Commissioner finds it difficult to give much weight to bare conclusions in affidavits that appear to be prepared by counsel.

15. The Commissioner does find the testimony of Mr. Stephen Sales to be credible. While not all of the facts gathered in his audit are directly relevant to the issue of whether Liberty Mutual properly classified the workers under the law as enunciated in *Iowa Mutual Insurance Co.*, the Commissioner agrees with Liberty Mutual's determination based on consideration of all of the evidence received.

NOW THEREFORE, the decision of Liberty Mutual to classify Adan Zuniga, Samira Zuniga and Alex Lorena Silvestre as employees is affirmed.

SO ORDERED this 5 day of September, 2014.



NICK GERHART
Commissioner of Insurance
Iowa Insurance Division

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