

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Home Solution Pros, LLC v. Russell Fry, Acting Executive Director, Workforce West Virginia, Unemployment Compensation Division

No. 15-0391 (W. Va. Apr. 8, 2016) · No. No. 15-0391 · Decided April 8, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order upholding the determination that Home Solution Pros, LLC was a successor employer to Quality Home Solutions, LLC. The court concluded that common management and ownership, shared business addresses and members, and the transfer of employees supported successor-employer status under West Virginia law. The court also upheld the finding that Home Solution Pros was liable for SUTA dumping because it was established primarily to obtain a lower unemployment contribution rate.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Menis E. Ketchum; Robin Jean Davis; Brent D. Benjamin; Margaret L. Workman; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 8, 2016
DOCKET	No. 15-0391
DISPOSITION	affirmed
PROCEDURAL POSTURE	Home Solution Pros appealed the Circuit Court of Kanawha County's order affirming Workforce West Virginia's determination that Home Solution Pros was a successor employer and liable for SUTA dumping.
STANDARD OF REVIEW	Under West Virginia Code § 29A-5-4(g), an agency decision may be affirmed, remanded, reversed, vacated, or modified based on the statutory grounds listed there. On appeal from a circuit court's review of an administrative order, questions of law are reviewed de novo, while factual findings by the administrative officer receive deference unless clearly wrong.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Home Solution Pros, LLC v. Russell Fry, Acting Executive Director, Workforce West Virginia, Unemployment Compensation Division

TOPICS

unemployment benefits

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Home Solution Pros was a successor employer under West Virginia Code § 21A-1A-26 because it acquired, by sale or otherwise, the entire organization, trade or business, or substantially all of the assets of Quality Home Solutions.
2. Whether Home Solution Pros was liable for SUTA dumping under West Virginia Code § 21A-5-10c based on common ownership, management, or control and the purpose of obtaining a lower contribution rate.
3. Whether the circuit court erred by affirming Workforce West Virginia's administrative determination.

HOLDINGS

1. Home Solution Pros was a successor employer because it acquired, by sale or otherwise, the entire organization, trade or business, or substantially all of the assets of Quality Home Solutions.
2. Home Solution Pros was liable for SUTA dumping under West Virginia Code § 21A-5-10c because common ownership existed and the evidence showed that the company was established solely or primarily to obtain a lower unemployment contribution rate.
3. The circuit court did not err in affirming Workforce West Virginia's determination because the agency's decision was supported by the applicable statutes and the undisputed record.

KEY QUOTATIONS

“Based on the record, we agree with respondent that petitioner was established to avoid the 8.5 percent tax rate in favor of the rate for a new employer, which was 2.7 percent.” (5-6)

“Accordingly, the circuit court did not err in concluding that petitioner is a “successor employer” because petitioner “acquire[d], by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer[,]” Quality Home Solutions, LLC.” (6)

FACTUAL BACKGROUND

Quality Home Solutions, LLC, formerly Home Solutions, operated a residential home-building business and had an unemployment contribution rate of 8.5 percent for 2010. Home Solution Pros began operating in January 2010 with Ann E. Skiles as its managing member, shared members and a business address with Quality Home Solutions, and hired several of Quality Home Solutions' former employees. Workforce West Virginia concluded that Home Solution Pros had acquired Quality Home Solutions' business and had been established substantially to obtain a lower unemployment contribution rate, making it a successor employer liable for SUTA dumping.

PROCEDURAL HISTORY

Workforce West Virginia determined that Home Solution Pros acquired the organization, trade, business, or substantially all of the assets of Quality Home Solutions and thereby acquired its unemployment tax liability and contribution rate. After an evidentiary hearing, an administrative law judge found successor-employer status and SUTA dumping; Workforce West Virginia adopted that decision. The Circuit Court of Kanawha County affirmed on March 30, 2015, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Muscatell v. Cline, 196 W. Va. 588, 474 S.E.2d 518 (1996)
- Davis v. Celotex Corp., 187 W. Va. 566, 420 S.E.2d 557 (1992)

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