

From: Taylor, Richele
To: Stanton, Cheryl <cstanton@dew.sc.gov>
Date: 12/2/2016 3:35:10 PM
Subject: FW: DEW / Minority-owned business issue
Attachments: Court of Appeals Opinion.pdf
Supreme Court Opinion.pdf

From: Tina Cundari [mailto:tcundari@sowellgray.com]
Sent: Friday, December 02, 2016 12:23 PM
To: Taylor, Richele <RicheleTaylor@gov.sc.gov>
Cc: David Dick <ddick@dicklawoffice.com>
Subject: DEW / Minority-owned business issue

Richele,

Thanks again for taking the time to speak with me about this matter. My apologies for not getting this to you yesterday.

As I mentioned on our call, attorney David Dick and I represent a company called Rest Assured in a matter involving the South Carolina Department of Employment and Workforce (DEW). Rest Assured is a small business owned and founded by an African-American woman named Reatha Johnson. Reatha is a remarkable person who is a nurse by training.

Rest Assured places Personal Care Aides (PCAs) in homes to provide non-nursing type care to the elderly and disabled. Rest Assured has a database of approximately 250 PCAs. Approximately 90% of the PCAs have other full time employment as health care professionals and work for Rest Assured on the side.

Rest Assured is governed by the In-Home Care Providers Act, S.C. Code Ann. § 44-70-10, which expressly allows in-home care agencies to use employees or independent contractors. The PCAs at Rest Assured chose to be treated as independent contractors and voluntarily signed independent contractor agreements stating so.

Despite the statute and the signed agreements, DEW has consistently taken the position that the PCAs are employees and not independent contractors, which has significant financial consequences for Rest Assured as a business. Rest Assured's primary clients are Medicaid and the Department of Veterans Affairs. These entities set the hourly rates for the PCAs, and Rest Assured cannot operate at a profit if the PCAs are treated as employees for tax purposes.

In 2006, DEW made the determination that the PCAs were employees based on certain provisions in the then-existing independent contractor agreements. After going through the administrative appeals process, the Court of Appeals overturned DEW's decision and specifically found that the PCAs were independent contractors. The Supreme Court reversed the Court of Appeals based on the stringent standard of review in the administrative process, not based on any findings of fact. The opinions are attached.

In 2011, while the initial appeal was pending, Rest Assured revised the independent contractor agreements to make it clear that the PCAs are in fact independent contractors, and then asked DEW for a redetermination of the PCAs' status. Once again, DEW found that the PCAs were employees. Rest Assured has administratively appealed this decision and is awaiting a hearing before the DEW Appeal Tribunal. It appears that no matter what Rest Assured does to try to run its business with independent contractors, as it is permitted to do by law,

DEW remains intent on finding that the PCAs are employees.

Additionally, DEW is now demanding that Rest Assured pay DEW over \$80,000, half of which is interest and penalties, and treat its PCAs as employees moving forward. This demand will force Rest Assured to shut its doors, which will not only destroy Reatha's business and livelihood, but will harm the 250 PCAs and the patients they serve.

We want Governor Haley to know about this. DEW's unreasonable and unrelenting stance on this issue is forcing Rest Assured into repeated litigation and is inconsistent with the pro-business policies of this state. Additionally, DEW's position is directly contrary to the law that allows in-home care providers to be independent contractors. Our hope is that Governor Haley can speak with Director Stanton about this matter, and determine whether there is anything to be done to save our client's business.

I am happy to answer any questions you may have, and welcome the opportunity to sit down with you and others about this matter.

Thank you very much for your time. I know you have a lot on your plate.

Sincerely,

Tina

TINA CUNDARI MEMBER **VCARD**

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