

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

Chris Haus Auto Sales, LLC,

:

Appellant,

:

CASE NO. 17 CV 5930

-vs-

:

**VISITING JUDGE
PATRICK SHEERAN¹**

**Director, Ohio Department of Job and
Family Services, and Megan Robinson,
Program Services/Tax Appeals**

:

Appellees.

:

DECISION AND ENTRY

SHEERAN, J.,

This matter comes before this Court upon the appeal of Appellant, Chris Haus Auto Sales, from a Decision of Appellee, Ohio Department of Job and Family Services, Unemployment Compensation Review Commission (“Review Commission”), which was mailed on June 7, 2017. The Appellee concluded that Appellant was a successor-in-interest to Ron Haus Motorcars, Inc. for purposes of determining Appellant’s unemployment contribution rate as an Ohio employer. R.C. 4141.24(F).

In a Director’s Reconsidered Decision, mailed November 16, 2016, the Director affirmed the Determination of Employer’s liability and Contribution Determination, mailed September 1, 2016 for Appellee. This determination found that Chris Haus Auto Sales, LLC was a successor-in-interest to Ron Haus Motorcars, Inc. effective July 1, 2012, assigning contribution rates of 2.70% for 2012, 8.40% for 2013, 8.5% for 2014, 8.60% for 2015, and 8.70% for 2016.

¹ Judge Patrick Sheeran is on assignment for Judge Colleen O’Donnell.

On December 1, 2016, Appellant filed an Application for Review of Director's Reconsideration Decision with the Review Commission. On May 22, 2017, Hearing Officer Emily Briscoe conducted a telephone hearing on behalf of the Review Commission. Appellant was represented by Attorney Brian Kopp, who presented Chris Haus as a witness. Appellee was represented by Attorney Bob Kennedy, and his witness, Catherine Bester, provided testimony on Appellee's behalf.

The June 7, 2017 Decision sets forth the following Findings of Fact:

Chris Haus is the son of Ron Haus. Chris Haus was employed by Ron Haus Motorcars, Inc. from 2004-2011 in various capacities. According to Chris Haus' LinkedIn webpage, while working for Ron Haus Motorcars, Inc, he "was the exclusive buyer of vehicles remarketed to the famous Buy-Here-Pay-Here chain, J.D. Byrider" He also "developed the dealership's Internet Sales and Marketing Department." Chris Haus continued to work for and drew a salary from Ron Haus Mototrcars, Inc for all of 2010, and his wages were reported by that employer and to the Ohio Job and Family Services. Ron Haus Motorcars, Inc. was located at 4141 Boardman-Canfield Road, Canfield, Ohio 44406. Ron Haus Motorcars, Inc. reported no wages for any employees after the second quarter of 2011. On September 26, 2012, Ron Haus Motorcars, Inc. filed a Bankruptcy Petition in the U.S. Bankruptcy Court, Northern District of Ohio. The bankruptcy case was terminated on February 22, 2013.

On October 14, 2010, Chris Haus incorporated Chris Haus Auto Sales, Inc., which does business as "Haus Auto Group." According to his LinkedIn webpage, Chris Haus established this business "for the purpose of expanding an existing, successful wholesale relationship with the 'J.D. Byrider Company' and to utilize his advanced technical experience to promote retail vehicles on venues such as E-Bay Motors and other on-line platforms." Chris Haus Auto Sales, LLC, was assigned an Employer Identification Number by the Internal Revenue Service on October 28, 2010. On December 20, 2010, a Motor Vehicle Dealer License was issued to Chris Haus Auto Sales, LLC, by the Ohio Bureau of Motor Vehicles.

Beginning on January 3, 2011, Chris Haus Auto Sales, LLC, leased the building located at 4141 Boardman-Canfield Road from Ron Haus Motorcars, Inc. In February, November and December 2011, Chris Haus Auto Sales, LLC, was approved for "floor plan" lines of credit with different financial institutions to use for the purchase of inventory. On April 5, 2013, Chris Haus Auto Sales, LLC, purchased the building located at 4141 Boardman-Canfield Road, including "the land and building, improvements, and fixtures thereon and all appurtenances thereunto belonging" through a court-appointed receiver for \$520,000 00. The desks and the service racks were affixed to the property, and were therefore purchased in the real estate transaction. Chris Haus

Auto Sales, LLC, purchased new computers. On December 5, 2011, Chris Haus Auto Sales, LLC, filed a Report to Determine Liability with the Ohio Department of Job and Family Services for the period beginning December 1, 2011, reporting that this business had employed eight people, five of whom had previously been reported as employees of Ron Haus Motorcars, Inc. One of these employees was Chris Haus.

On October 18, 2012, Ron Haus Auto Group, Inc. submitted a “Disposition of Business” report to the Ohio Department of Job and Family Services, and reported that this business had been disposed of on December 31, 2011. The document was signed by Ron Haus, President, and reported that a new owner, Chris Haus Auto Sales, LLC, “was operating the business”

June 7, 2017 Decision.

Assignment of Error

Appellant asserts the following assignment of error in its brief:

The decision of the Commission, dated June 7, 2017, held that Chris Haus Auto Sales was a successor-in-interest to Ron Haus Motorcars was not supported by reliable, probative and substantial evidence and was not in accordance with law.

Standard of Review

R.C. 4141.26(D) provides, in relevant part:

The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order *or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law.* (Emphasis added).

“Reliable evidence” is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. “Probative evidence” is evidence that tends to prove the issue in question; it must be relevant in determining the issue. “Substantial evidence” is evidence with some weight; it must have importance and value. *Our Place v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, (1992). In reviewing the decision of the Review Commission, the Court may not weigh or judge the credibility of the witnesses. This Court must give due deference to the administrative resolution of evidentiary conflicts. *All Star*

Personnel v. State of Ohio, 2006-Ohio-1302, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980); see also *Kathmandu, Inc. v. Bowland*, 1999 Ohio App. LEXIS 4499. Additionally, a reviewing Court must give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility. *Resources Title National Agency v. Ohio Dept. of Job & Family Services*, 2014-Ohio-3427.

Law and Analysis

R.C. 4141.24(F) provides, in pertinent part:

If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

Additionally, O.A.C. 4141-17-04 describes a successor in interest by operation of law:

(A) The transferee shall become the successor in interest by operation of law where:

- (1) There is a transfer of all of the transferor's trade or business located in the state of Ohio; and
- (2) At the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code.

(B) The transferee, as successor in interest, shall assume all of the resources and liabilities of the transferor's account. The director shall revise the contribution rates of the transferee to reflect the result of the successorship.

(C) The director shall not approve a transfer of experience or contribution rates of the transferee or transferor for any contribution period with respect to which the director has determined contribution rates for the transferee or transferor pursuant to division (G) of section 4141.24 or section 4141.48 of the Revised Code.

In its brief, Appellant asserts that (a) Chris Haus did not complete an application for successorship; and (b) Ron Haus Motorcars did not transfer all of its trade or business to Appellant.

R.C. 4141.09 mandates that every employer in the state make contributions to the unemployment compensation fund. Furthermore, the Ohio Department of Job and Family Services must determine each employer's contribution or experience rate. There are three methods of acquiring status as a successor-in-interest. Two of those methods require both the predecessor employer and acquiring employer to submit an application for successor-in-interest status. The remaining method, the one that is applicable to this case, is obtaining successor-in-interest status by operation of law. R.C. 4141.24(F); O.A.C. 4141-17-04.

The June 7, 2017 Decision states as follows, in pertinent part:

The Director's Reconsidered Decision, mailed November 16, 2016, is affirmed.

Chris Haus Auto Sales, LLC, is a successor in interest to Ron Haus Motorcars, Inc. and was properly assigned a contribution rate of 2.70% for 2012, 8.40% for 2013, 8.5% for 2014, 8.60% for 2015, and 8.70% for 2016.

This decision rules only on the issue set forth above.

June 7, 2017 Decision.

The record demonstrates that at every level of the administrative process, it has been consistently concluded, as a matter of law, that Appellant is a successor-in-interest to Ron Haus Motorcars, Inc. Moreover, this Court concludes, as a matter of law, that there is reliable, probative and substantial evidence to support that conclusion.

Appellant did not meet its burden of proof. *Prime Kosher Foods, Inc. v. Bureau of Employment Services*, 35 Ohio App. 3d 121 (1987). The evidence shows that the investigation began when Advanced Automated Management LLC, a third party reporting agency used by Chris Haus Auto Sales, LLC, requested a refund. Tr. 9. Catherine Hester, Unemployment Compensation Specialist 2, testified that she found an employee transfer demonstrating that seven (7) of Ron Haus Motorcars Inc.'s former employees were transferred to Chris Haus Auto

Sales LLC, which had eight (8) employees. Tr. 9. Exhibit 8. She testified that Chris Haus did not respond to the letter that was sent. Tr. 10. She stated that the two businesses of the father and son, Ron Haus Motorcars, Inc. and Chris Haus Auto Sales LLC, were operating at the same address. Tr. 11.

Additionally, the evidence demonstrates that Appellant and Ron Haus Motorcars Inc. were under common management and control. The evidence demonstrates that Chris Haus had been employed by Ron Haus Motorcars Inc. from 1998 to 2004, and from 2004 through 2011 worked at that location in various capacities. Tr. 11, 28. In 2009, Chris Haus signed the Trade Name renewal for Ron Haus Motorcars Inc. Tr. 14; Exhibit 11. The Trade Name renewal document required the signature of a corporate office, general partner, associate member, or individual applicant.

On October 14, 2010, Chris Haus incorporated Chris Haus Auto Sales, LLC. He listed the address as 4141 Boardman-Canfield Road, Canfield, Ohio 44406, the same address used by Ron Haus Motorcars Inc. Chris Haus Auto Sales, LLC was granted an Employee Identification Number (EIN) from the Internal Revenue Service (IRS). Additionally, the State of Ohio approved a dealer license for Chris Haus Auto Sales, LLC. Both the EIN and the dealer license were used at the 4141 Boardman-Canfield Road, Canfield, Ohio 44406 address.

The record shows that on January 3, 2011, Chris Haus Auto Sales, LLC leased the building of Ron Haus Motorcars, Inc. located at 4141 Boardman-Canfield Road, Canfield, Ohio 44406. Chris Haus Auto Sales, LLC also leased an office from Ron Haus Motorcars, Inc. for a period of time prior to the lease.

The record shows that in the second quarter of 2011, both Ron Haus and Chris Haus were paid wages by Ron Haus Motorcars, Inc. In December of 2011, Chris Haus was listed as one of

the eight employees of Chris Haus Auto Sales, LLC. In fact, seven of the Chris Haus Auto Sales, LLC's employees were former employees of Ron Haus Motorcars, Inc., including Chris Haus.

The record shows that Ron Haus Motorcars, Inc. filed a bankruptcy petition on September 26, 2012. Tr. 28. The bankruptcy proceeding was terminated on February 22, 2013. On April 4, 2013, Chris Haus purchased the property he had been leasing at 4141 Boardman-Canfield Road from the court-appointed receiver. Tr. 30. The purchase agreement specified that the purchase included "the land and building, improvements, and fixtures thereon and all appurtenances thereunto belonging." Tr. 35. The desks and car service racks were affixed to the property, and thus, were purchased along with the building. Chris Haus Auto Sales, LLC purchased new computers and phones. The evidence was that the service tools belonged to the individual mechanics.

The evidence demonstrated that Chris Haus conducted the same activities under Chris Haus Auto Sales, LLC as he did while employed with Ron Haus Motorcars, Inc. When Chris Haus incorporated Chris Haus Auto Sales, LLC he did so "for the purpose of expanding an existing, successful wholesale relationship with the 'J.D. Buyrider Company' and to utilize his advanced technical experience to promote retail vehicles on venues such as E-Bay Motors and other on-line platforms."

The evidence also demonstrates that when Ron Haus filed his Disposition of Business form with ODJFS he indicated "that a new owner, CHAS, was operating his former business at the same address." Hearing Exhibit 5. The record shows that Appellant does business as "Haus Auto Group," and while operating in the same location, makes it less distinguishable from Ron Haus Motorcars, Inc. O.A.C. 4141-17-01. Thus, Appellant has benefitted from the customer

goodwill and name recognition of Ron Haus Motorcars, Inc. Moreover, the information as set forth on Chris Haus' LinkedIn webpage supports the fact that he was paid by Ron Haus Motorcars, Inc. to perform the same activities for several months prior to transitioning to his own company, and establishes that Appellant was not a distinct entity, that was separate from Ron Haus Motorcars, Inc.

The evidence shows that Chris Haus purchased the property at 4141 Boardman-Canfield Road, Canfield, Ohio 44406 six weeks after the termination of the Ron Haus Motorcars, Inc. bankruptcy. At the time of the purchase from the court-appointed receiver, Ron Haus Motorcars, Inc. transferred all the remaining assets, after it had dealt with the remaining inventory and all other physical assets. Thus, Chris Haus bought all of Ron Haus' Motorcars Inc.'s remaining assets that existed at the time of his purchase of the property.

Accordingly, the evidence demonstrates that the transfer resulted in Appellant becoming a successor-in-interest *by operation of law*. R.C. 4141.24(F); O.A.C. 4141-17-04. In light of the fact that Appellant became a successor-in-interest *by operation of law*, the only legal conclusion is that Appellee's decision is in accordance with law. Cf. *AWL Transp., Inc., v. Ohio Dep't of Job and Family Services*, 2016-Ohio-2954.

Based on the foregoing, Appellant's legal arguments are hereby **OVERRULED**.

DECISION

Accordingly, this Court concludes that Appellee's June 7, 2017 Decision is supported by reliable, probative and substantial evidence and is in accordance with law, because the evidence demonstrates that Appellant became a successor in interest by operation of law. Thus, Appellee's June 7, 2017 Decision is hereby **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS

IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 11-21-2017

Case Title: CHRIS HAUS AUTO SALES LLC -VS- OHIO STATE
DEPARTMENT JOB & FAMILY SERV ET AL

Case Number: 17CV005930

Type: ENTRY

It Is So Ordered.

A handwritten signature of "Patrick E. Sheeran" is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO", "COMMON PLEAS COURT", and "THEODORE W. STUCKEY, JUDGE". Below the seal, there is a small emblem featuring a shield and a sword.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 17CV005930

Case Style: CHRIS HAUS AUTO SALES LLC -VS- OHIO STATE
DEPARTMENT JOB & FAMILY SERV ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes