



STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Barbara A. Bergen,
Relator (your name)

**RELATORS ARGUMENT
ON APPEAL**

vs.

COURT OF APPEALS NO: **A10-1498**

1) SONNIE OF ST. PAUL, INC.,
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #:

2) Department of Employment & Economic
Development,
Respondent.

DATE OF DECISION:

TO: MINNESOTA APPELLATE COURT

FACTS

Barbara A. Bergen has been employed by Sonnie of St. Paul, Inc. since 1998. Barbara A. Bergen became President of Sonnie of St. Paul, Inc. in 2008.

In June, 2008, Sonnie of St. Paul, Inc.'s stock was purchased by BA Bergen, LLC, a Minnesota limited liability company. Barbara A. Bergen owns the stock in BA Bergen, LLC.

On or about April 20, 2010, Sonnie of St. Paul, Inc. closed its doors and ceased doing business.

From June, 2008, until April 20, 2010, neither Sonnie of St. Paul, Inc; BA Bergen, LLC; nor Barbara A. Bergen received notice from the Minnesota Department of Employment and Economic Development that Barbara A. Bergen was viewed as an owner of 25% or more of Sonnie of St. Paul, Inc. and was therefore a non-covered employee pursuant to Minn. Stat. §268.035 subd. 20.

Barbara A. Bergen has been a contributing Employee for unemployment benefits during the term of her employment with Sonnie of St. Paul, Inc. from 1998 through April 20, 2010.

ISSUES

- I. Is Barbara A. Bergen a non-covered Employee under the terms of Minn. Stat. §268.035 subd. 20?
- II. Did Barbara A. Bergen receive notice from the Minnesota Department of Employment and Economic Development that it viewed Barbara A. Bergen as an owner of 25% or more of Sonnie of St. Paul, Inc. and was therefore a non-covered employee which the employer must elect to be covered for unemployment insurance?

ARGUMENT

I.

Minn. Stat. §268.035 subd. 20 indicates that a corporate officer who owns 25% or more of the employer corporation is non-covered employment. The Employer must then elect under Minn. Stat. §268.042 subd. 3 to cover a non-covered Employee.

I am not a non-covered employee under the plain language of Minn. Stat. §268.035 subd. 20 since I do not own stock of Sonnie os St. Paul, Inc., my employer. The stock of Sonnie St. Paul, Inc. is owned by BA Bergen, LLC., a separate legal entity from myself. The plain language of §268.035 subd. 20 does not include me as a non-covered employee.

To conclude that I, as an individual, am a non-covered employee under §268.035 subd. 20 requires the plain meaning of §268.035 subd. 20 to be expanded to include indirect ownership. Since I own the stock of BA Bergen, LLC., it could be argued that I indirectly own the stock of Sonnie of St. Paul, Inc. though that ownership is through a separate legal entity, a Minnesota limited liability corporation.

In the case of Podratz v Built by Design, Inc., 2010 WL 2035809 (Minn. App.) Podratz put forth an equitable argument that his failure to file a coverage election was due to human error and that the fact that his employer continued to pay taxes on his wages is a very strong indication of his intent to be covered. This court noted that while this argument had sympathetic appeal, it does not address the statutes plain language requirements.

The plain language of §268.035 subd. 20 does not define Barbara A. Bergen as a non-covered employee.

II.

Barbara A. Bergen did not receive notice from the Minnesota Department of Employment and Economic Development that it viewed Barbara A. Bergen, individually as a non-covered Employee under §268.035 subd. 20. Notice was not provided to Barbara A. Bergen individually, Sonnie of St. Paul, Inc., or BA Bergen, LLC, for the period of time (June 2008 to April 20, 2010) the Department alleges I was a non-covered Employee.

I should not be held responsible for an expanded interpretation of §268.035 subd. 20 beyond its plain meaning without notice.

CONCLUSION

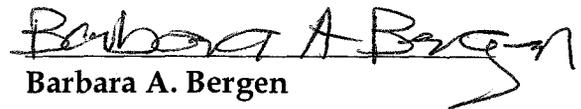
Barbara A. Bergen is **not** a non-covered Employee under §268.035 subd. 20 that would require her employer to elect coverage under §268.042 subd. 3.

No notice was provided to Barbara A. Bergen by the Minnesota Department of Employment and Economic Development that it viewed Barbara A. Bergen as a non-covered employee under its expanded interpretation of

§268.035 subd. 20 that would require her employer to elect coverage under
§268.042 subd. 3.

Respectfully Submitted,

Dated: 11-22-10


Barbara A. Bergen