

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF
PAYSOURCE, INC., PSI-IV, INC.,
PAYSOURCE USA, INC.,
PAYSOURCE USA X, INC.,
PROFESSIONAL EMPLOYER
ORGANIZATIONS UNDER THE
PROFESSIONAL EMPLOYER
ORGANIZATION ACT

FINAL AGENCY DECISION

Docket Number 1429

THIS CAUSE came on to be heard on the 14th day of January, 2009 before the undersigned Hearing Officer for the North Carolina Department of Insurance (hereinafter "Department") upon a Notice of Administrative Hearing dated December 3, 2008;

The Department was represented by David W. Boone, Assistant Attorney General, and the Respondents PaySource, Inc., PSI-IV, Inc., PaySource USA, Inc., and PaySource USA X, Inc. (collectively "Respondents") did not appear at the hearing;

Any finding of fact contained in this Final Agency Decision that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this Final Agency Decision that constitutes a finding of fact is hereby adopted as a finding of fact.

From the competent testimony, the exhibits introduced by the Department, and after hearing the arguments of counsel for the Department, the undersigned Hearing Officer makes the following FINDINGS OF FACT:

1. The current matter was commenced by the issuance of a Notice of Hearing on December 3, 2008. Respondents PaySource, Inc., PSI-IV, Inc., PaySource USA, Inc., and PaySource USA, Inc. were each mailed a copy of the Notice of Hearing by certified mail, return receipt requested on December 3, 2008, properly addressed to each corporation c/o Charles C. Painter, CEO who is the CEO of record for each of the corporations.

2. On February 20, 2008, in a related proceeding, PaySource, Inc. and PSI-IV, Inc. agreed, prior to an administrative hearing before the North Carolina Commissioner of Insurance, Docket No. 1393 to the entry of a Consent Order in which PaySource, Inc. and PSI-IV, Inc.

agreed to "...cease and desist from engaging in PEO operations in North Carolina, and shall not engage in any such operations in the future." This administrative matter arose after the Department alleged that PaySource, Inc. and PSI-IV, Inc. had engaged in professional employee organization ("PEO") operations in North Carolina without being licensed to do so.

3. On January 11, 2008, a corporation named PaySource USA X, Inc. filed a Certificate of Authority to transact business in the State of North Carolina with the North Carolina Secretary of State. PaySource USA X, Inc. has the same Chief Executive Officer and business address as PaySource, Inc. and PSI-IV, Inc.

4. On January 22, 2008, a corporation named PaySource USA, Inc. filed a Certificate of Authority to transact business in the State of North Carolina with the North Carolina Secretary of State. PaySource USA, Inc. has the same Chief Executive Officer and business address as PaySource, Inc., PSI-IV, Inc., and PaySource USA X, Inc.

5. PSI-IV, Inc. listed PaySource USA, Inc. as its assumed name in its PEO license application made to the North Carolina Department of Insurance dated March 27, 2007, and the application for PSI-IV, Inc.'s license application was paid by a check written on the account of PaySource USA, Inc.

6. On March 26, 2008, a resident of Mecklenburg County, North Carolina filed a worker's compensation claim against PaySource USA X, Inc. with the North Carolina Industrial Commission which, as of the date of this hearing, still pending before the North Carolina Industrial Commission.

7. By letter dated July 16, 2008, PaySource USA, Inc. advised a third company, by letter dated July 16, 2008 that PaySource USA, Inc. assumed the responsibility of the defense of the worker's compensation claim described in Paragraph 6 above. The letter was written on letterhead bearing the words "PaySource USA, A Professional Employer Organization" and was signed by James A. Schuttinger, Chief Operating Officer.

8. In the first and second quarters of 2008, PaySource USA X, Inc. reported that it had employees in North Carolina for which it paid payroll taxes to the North Carolina Employment Security Commission. As of June 30, 2008, PaySource USA X, Inc. reported that it had paid wages for ninety or more employees in North Carolina for the second quarter of 2008.

9. Respondents did not appear for the hearing in this matter which was scheduled for January 14, 2009. Former counsel for PaySource, Inc. and PSI-IV, Inc. advised the undersigned Hearing Officer and counsel for the Department, by letter dated December 8, 2008, that he no longer represented PaySource, Inc. or PSI-IV, Inc. and that he had never represented PaySource USA X, Inc. or PaySource USA, Inc.

Based on the foregoing Findings of Fact, the undersigned CONCLUDES AS A MATTER OF LAW:

1. PaySource USA, Inc. and PaySource USA X, Inc. are alter egos or instrumentalities of PaySource, Inc. and PSI-IV, Inc. such that the activities of PaySource USA, Inc. and PaySource USA X, Inc. should be imputed to PaySource, Inc. and PSI-IV, Inc.

2. The evidence presented at the hearing in the form of testimony and the exhibits introduced is sufficient to prove the allegations in the Notice of Hearing. Additionally, pursuant to 11 N.C.A.C. 1.0423, Respondents' failure to appear at the duly noticed hearing in this matter justifies a finding that the allegations of and the issues set forth in the Notice of Hearing issued in this matter on December 3, 2008 are to be taken as true or deemed to be proved without further evidence and said allegations and issues are hereby taken as true.

3. Respondents have engaged in professional employer or professional employer organization services in the State of North Carolina on and after February 20, 2008 in violation of both N.C. Gen. Stat. § 58-89A-35(a) and the order of the Commissioner entered on February 20, 2008 in Docket Number 1393 and these violations continued at least until June 30, 2008.

4. In accordance with N.C. Gen. Stat. §§ 58-89A-165, 58-89A-155, 58-89A-170 and 58-63-32, Respondents shall hereby immediately cease and desist from violating any provision of North Carolina law, including, but not limited to any provision of Chapter 58 of the North Carolina General Statutes, and in particular, any provision of Article 89A of Chapter 58 of the North Carolina General Statutes which regulates Professional Employer Organizations in North Carolina.

5. In accordance with the provisions of N.C. Gen. Stat. §§ 58-89A-155, 58-89A-160 and 58-2-70, civil penalties should be imposed upon Respondents, jointly and severally, for their violations of Article 89A of Chapter 58 of the North Carolina General Statutes.

6. At least one worker's compensation claim has been filed by an employee of Respondents in North Carolina. The failure of Respondents to be properly licensed in North Carolina presents a grave risk of harm that the ninety or more employees of Respondents in North Carolina are not adequately protected by insurance for injuries or occupational diseases that they may incur while employed by Respondents in accordance with North Carolina law as it relates to professional employer organizations.

7. The violations committed by the Respondents were willful.

8. From February 20, 2008 until June 30, 2008, Respondents committed daily violations of Article 89A of the North Carolina General Statutes and the February 20, 2008 order of the Commissioner by continuing to offer or provide professional employer organization services in North Carolina without being licensed to do so. Respondents committed in excess of 128 violations of N.C. Gen. Stat. § 58-89A-35(a) and the February 20, 2008 order of the Commissioner by continuing to offer or provide professional employer organization services in North Carolina without being licensed to do so. Under N.C. Gen. Stat. § 58-2-70, each day

during which a violation occurs constitutes a separate violation. N.C. Gen. Stat. § 58-2-70(d) authorizes the Commissioner to order a monetary penalty of up to \$1000 per day for these violations.

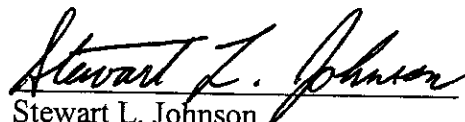
9. In determining the amount of the penalties, the Hearing Officer has considered the penalty factors set out in N.C. Gen. Stat. § 58-2-70(d). Respondents, jointly and severally, should be assessed monetary penalties in the amount of \$128,000 for the violations described in this order.

IT IS, THEREFORE ORDERED:

1. Respondents and each of their successors, assigns or affiliates shall immediately cease and desist from any further violations of North Carolina law, including but not limited to, any violations of Chapter 58 of the North Carolina General Statutes including Article 89A of Chapter 58 of the North Carolina General Statutes.

2. Respondents, jointly and severally, are hereby ordered to pay immediately monetary penalties in the amount of \$128,000 to the North Carolina Department of Insurance. The check for the payment of these civil penalties shall be payable to the "North Carolina Department of Insurance." These civil penalties shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools.

This 5th day of February, 2009.



Stewart L. Johnson
Hearing Officer
N.C. Department of Insurance

NOTICE REGARDING JUDICIAL REVIEW

This Order, which is considered a Final Agency Decision, may be appealed to Superior Court within thirty days of receipt, as provided by the North Carolina General Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the attached ***Final Agency Decision*** by certified, first class mail, postage prepaid, and via State Courier Service addressed as follows to:

Mr. Charles C. Painter, CEO
PaySource, Inc.
6500 Poe Avenue, 4th Floor
Dayton, Ohio 45414

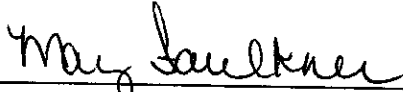
Mr. David W. Boone
Assistant Attorney General
North Carolina Department of Justice
Insurance Section
Post Office Box 629
Raleigh, North Carolina 27602-0629

Mr. Charles C. Painter, CEO
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Mr. Charles C. Painter, CEO
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This the 5th day of February, 2009



Mary Faulkner
Paralegal
NC Department of Insurance
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Raleigh, NC 27699-1201