

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF THE)
LICENSURE OF THE)
CASTLETON GROUP, INC.,)
CASTLETON ASSOCIATES, LLC,)
AND CASTLETON AFFILIATES,)
LLC, AS A PROFESSIONAL)
EMPLOYER ORGANIZATION)
GROUP UNDER THE)
PROFESSIONAL EMPLOYER)
ORGANIZATION ACT)

FINAL AGENCY DECISION

Docket Number 1370

THIS CAUSE came on to be heard on the 25th day of October, 2007 and completed on November 28, 2007, before the undersigned Hearing Officer for the North Carolina Department of Insurance (hereinafter "Department") upon a Notice of Administrative Hearing dated June 8, 2007;

The Department was represented by David W. Boone, Assistant Attorney General, and the Petitioners Castleton Group, Inc., Castleton Associates, LLC, and Castleton Affiliates, LLC (hereinafter "Castleton Group") were represented by R. Frank Gray, Esq. and John D. Love, Esq. of the firm of Jordan Price Wall Gray Jones & Carlton, PLLC;

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

1. Petitioners Castleton Group, Inc., Castleton Associates, LLC, and Castleton Affiliates, LLC (hereinafter "Castleton Group") applied to the Department for a license to operate as a professional employer organization group under the provisions of N.C. Gen. Stat. § 58-89A-35.

2. On November 20, 2006, the North Carolina Department of Insurance issued a Notification which denied Castleton Group's Application for a Professional Employer Organization Group License. This Notification was issued pursuant to N.C. Gen. Stat. § 58-89A-60(h).

3. Pursuant to N.C. Gen. Stat. § 58-89A-60(h), Castleton Group requested a review of the Notification. On February 2, 2007, after completing its review, the North Carolina Department of Insurance issued a confirmation of the denial of Castleton Group's Application for a Professional Employer Organization Group License (the "denial").

4. Castleton Group requested this hearing to review the denial.

5. The audited GAAP financial statements presented at the hearing show that the Castleton Group has liabilities that exceed its assets by more than \$ 6 million.

6. The audited GAAP financial statements presented at the hearing show that the Castleton Group cannot demonstrate that it is not in a hazardous financial condition.

7. The audited GAAP financial statements presented at the hearing show that the Castleton Group is insolvent.

8. The audited GAAP financial statements presented at the hearing show that the Castleton Group is in a hazardous financial condition under the test established under N.C. Gen. Stat. § 58-47-60(9).

9. Castleton Group's attempt to place a value on "goodwill" is unavailing. Goodwill may only be valued as an element of the sale value of an entity such as the Castleton Group, and may not be considered as an element of the going concern value of a business such as the Castleton Group. This finding is further bolstered by the fact that it is not recognized in any of the Castleton Group's GAAP financial statements.

10. Castleton Group filed a "Motion to Hold Hearing in Abeyance," dated November 27, 2007, which states that Castleton Group's Chief Financial Officer has participated in improper financial reporting activities, that he has resigned, that Castleton Group has hired an outside firm to evaluate its financial condition, and that it does not wish to pursue its license application as a Professional Employer Organization.

11. Additional testimony was presented by Castleton Group at the hearing on November 28, 2007. That testimony showed that on November 16, 2007, the former Chief Financial Officer admitted to the Chief Executive Officer of Castleton Group that the Chief Financial Officer had prepared and filed false federal payroll tax forms and had failed to pay an estimated \$8 million in federal payroll taxes due from the Castleton Group for the years 2005, 2006, and 2007. The November 28, 2007 hearing testimony further showed that the financial statements previously prepared by the Castleton Group and submitted to the Department as part of the license application are materially inaccurate because they do not disclose accurately the payroll tax liability.

12. The employment of both the Chief Financial Officer and the Controller of Castleton Group has been terminated.

13. The financial information presented to the Hearing Officer shows that Castleton Group is insolvent.

14. The Department's license denial should be affirmed on the grounds that the audited GAAP financial statements of Castleton Group do not show that Castleton Group is not in a hazardous financial condition.

15. The Department's license denial should be affirmed on the grounds that the audited GAAP financial statements of Castleton Group contain material misrepresentations by their failure to reflect the additional \$8 million in unpaid federal payroll taxes due from the Castleton Group.

16. Prior to the presentation of evidence at the hearing, Castleton Group moved for a protective order as to financial and client information pursuant to 11 N.C.A.C. 1.0430.

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

1. N.C. Gen. Stat. § 58-89A-60(b) states, in part, that "every applicant shall file with the Commissioner evidence of financial responsibility. Evidence of financial responsibility includes an audited GAAP financial statement, prepared as of a date not more than 90 days before the date of application that demonstrates that the applicant or licensee is not in a hazardous financial condition..."

2. The standards of N.C. Gen. Stat. § 58-47-60 (9) are applicable to determine whether Castleton Group is in a hazardous financial condition.

3. Castleton Group's financial statements, submitted as a part of the application for the license, contain material misrepresentations in failing to disclose the correct amount of unpaid payroll tax liability.

4. Castleton Group is insolvent.

5. In accordance with N.C. Gen. Stat. § 58-47-60 (9), Castleton Group is in a hazardous financial condition.

6. Pursuant to N.C. Gen. Stat. § 58-89A-60 (b), the license denial should be affirmed on the grounds that the evidence presented at the hearing does not demonstrate Castleton Group's financial responsibility as required by N.C. Gen. Stat. § 58-89A-60 (b).

7. Pursuant to N.C. Gen. Stat. § 58-89A-60 (h), the license denial should be affirmed

because the Castleton Group's financial statements contain material misrepresentations in obtaining or attempting to obtain a license

8. To allow Castleton Group to continue to operate as a PEO in North Carolina would be contrary to the best interests of North Carolina consumers.

9. 11 N.C.A.C. 1.0430 provides, in part, that "(t)he official record of a contested case is available for public inspection upon reasonable request." N.C. Gen. Stat. § 58-89A-140 provides, in part, that the correct name, address, and telephone number of each client company shall be treated as "proprietary and confidential" except for disclosure to other governmental agencies.

IT IS, THEREFORE, ORDERED:

1. The Department's decision to deny a license to the Castleton Group is **AFFIRMED**, and the license application of Castleton Group under N.C. Gen. Stat. § 58-89A-35 is **DENIED**.

2. Castleton Group is **ORDERED** to cease and desist from engaging in any of the following acts:

(A) Engaging in or offering professional employer services without holding a license under this Article as a professional employer organization.

(B) Using the name or title "staff leasing company", "employee leasing company", "licensed staff leasing company", "staff leasing services company", "professional employer organization", or "administrative employer" or otherwise representing that they are licensed unless they hold a license issued under this Article.

(C) Representing as their own the license of another person or represent that they are licensed if they do not hold a license.

(D) Using or attempting to use a license that has been terminated.

3. Castleton Group shall:

(A) Pay valid claims arising out of its health benefit plan;

(B) Continue to maintain workers' compensation insurance and continue to pay workers' compensation obligations in excess of its insurance coverage until its clients and employees are transferred and new workers' compensation coverage is secured;

(C) Meet its payroll and tax obligations for its clients and employees until its clients and employees are transferred to a new employer;

4. Castleton Group shall immediately notify its clients and employees that its PEO license application has been denied and that Castleton Group is no longer authorized to provide PEO services in the State of North Carolina;

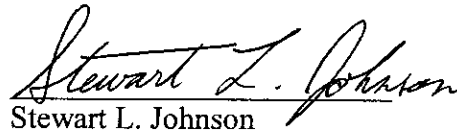
5. Castleton Group shall immediately provide to the Department a list of addresses, telephone numbers and email address contacts for its clients;

6. Castleton Group shall not repay any stockholder, officer or director loans until all other obligations are satisfied.

7. Castleton Group's Motion for Protective Order is granted only to the extent that client names, addresses, telephone numbers and email address contact for its clients shall remain confidential and shall not appear in the public record of this proceeding. The remainder of Castleton Group's Motion for Protective Order is denied.

8. Castleton Group shall use its best efforts to effectuate an orderly transfer of its employees and clients to a new employer.

This 29th day of November, 2007.



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.