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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of)
)
CALIFORNIA RESTAURANT VENTURES, INC.)
AND RANCHO CUCAMONGA RESTAURANT)
VENTURES,)
)
Appellant,) **FILE NO. ALB-WCA-00-36**
)
From a Decision of)
)
WORKERS' COMPENSATION INSURANCE)
RATING BUREAU OF CALIFORNIA,)
)
Respondent.)
_____)

PROPOSED DECISION

Introduction

The dispute underlying this appeal arises over the rates charged for Rancho Cucamonga Restaurant Ventures, Inc.'s ("RCRV" or "appellant") workers' compensation insurance policy, Number 29-7092, issued by State Compensation Insurance Fund ("SCIF"), for the coverage period June 30, 2000 through June 30, 2001. The rates charged were based in part on the experience modifications assigned to appellant by SCIF and the Workers' Compensation

approved by the Insurance Commissioner of the State of California. (Plan, Part I, Section II, paragraph 4.) These regulations have a binding effect equal to the force of legislative enactments. (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 6 Cal.3d 392, 401.)

Appellant's Arguments

Appellant advances the following arguments in support of its contention that RCRV and CRV should be considered separate risks for the purposes of experience rating and given their own, rather than combined, experience modification rates.

1. The Regulations Conflict With Corporate Law ("Piercing the Corporate Veil")

Appellant's assertion that the Rating Plan's combination of entities rule conflicts with corporate law because it "pierces the corporate veil" is unsupported. Appellant confuses two areas of law, corporations and insurance regulation. The application of insurance regulatory laws here does not cause a conflict with corporate law. Appellant makes a blanket assertion that the two areas of law conflict because appellant believes that they do. However, appellant failed to provide any evidence to support this assertion.

In determining appellant's experience modification, the Rating Bureau properly applied the Rating Plan rules to RCRV and CRV as corporations. Both are legal entities separate from their stockholders and under the control of the shareholders owning the majority of the stock. Except in cases involving employer subterfuge to evade the workers' compensation laws, the Rating Bureau, in administering the Rating Plan's combination of entities rule, has no discretion to consider the motives of a corporation's promoters for forming a corporation. To hold otherwise would contravene the express mandate of the Rating Plan rules. The Rating Bureau and the Insurance Commissioner, acting in a quasi-judicial capacity, are bound by the clear terms

of the Rating Plan and may not add to or alter those terms to accomplish a purpose that does not appear on the face of the regulation.

The fact that RCRV and CRV are corporations is immaterial to their ownership for rating purposes. The Rating Bureau is required to determine the individual owners of both corporations in order to determine who the majority owners are under the rules of the Rating Plan. The Rating Plan requires that “*separate entities shall be combined for experience rating purposes when the same person or persons own a majority interest in each of the entities.*” (Plan, Section IV, Rule 2.) (Emphasis added.) Here, based on the stock certificates that Mr. Davidson supplied to the Rating Bureau (Findings, pp. 4-5), the Rating Bureau determined that RCRV and CRV shared in excess of fifty percent or “majority” ownership, and appellant admits this ownership (Findings, pp. 4-6).

Regulatory law requires the Rating Bureau to look behind the corporate veil to determine who the individual “person or persons” are that hold stock, so that the Rating Bureau can determine whether majority common ownership exists. “Looking behind the corporate veil” for this purpose is not the same as “piercing the corporate veil.”

In the case of *Diamondback Enterprises, Inc. v. The Workers’ Compensation Insurance Rating Bureau of California*, (1991), AHB-WCA File No. SF 6960-R-82, the appellant alleged that the Rating Bureau “pierced appellant’s corporate veil” when the Rating Bureau combined appellant’s losses with those of its subsidiary for the purpose of determining majority common ownership under the Rating Plan’s combination of entities rule. As in this case, the owners of the combined corporations in *Diamondback* shared in excess of fifty percent ownership of both corporations.

The Insurance Commissioner in *Diamondback* held that the Rating Bureau must look behind the corporate veil to determine who is actually running the entity, holding that it is the “. . . people, not the corporate entities [who] make the decisions.” (*Diamondback, supra*, at p. 2.)

Furthermore, the Commissioner stated:

. . . the complete system of workers’ compensation encompasses more than a system for delivery of benefits to injured workers. A basic tenet of the workers’ compensation law is to make employers responsible for the injuries to the workers, without regard to fault. Work injuries are to be considered a part of the cost of doing business, just as repairing broken machinery would be. Further, a responsibility is placed on employers to maintain a safe work environment. (*Id.* at p.2.)

Insured employers are expected to sustain some losses under their workers’ compensation policies. The California Experience Rating Plan (‘Plan’), Title 10, California Code of Regulations Section 2353, furthers the basic principles of the workers’ compensation system by (1) rewarding employers whose losses are less than expected, and (2) exacting additional premium from those employers whose losses are greater than would be expected. The problem sometimes is; who is the employer responsible for these losses? (*Id.* at p. 3.)

The use of the term “piercing the corporate veil” in the *Diamondback* case is somewhat of a misnomer. The application of the combination of entities rule to determine majority ownership for regulatory purposes is not a genuine piercing of the corporate veil as that term is generally used but instead, the *Diamondback* case authorizes the Rating Bureau to “look behind” or “look through” the corporate veil for determination of ownership purposes. (*Id.*, pp. 2-3.)

California law has long recognized that the corporate veil will be pierced to hold an individual or entity liable for wrongdoing where the individual or entity so controls the corporation’s affairs that the corporation is merely an instrumentality, agency, conduit or adjunct of the individual or entity behind the veil, such that the two become a “single enterprise,” or

where the individual or controlling entity is the “alter ego” of the corporation. (2001 Cal. PUC Lexis 289, April 19, 2001, Decision No. 01-04-035, Filed August 6, 1998.)

Moreover, California courts have allowed the corporate veil to be pierced to prevent abuse of corporate privilege. Examples include attempts to escape individual liability for tortious interference with corporate contracts, or cases where individual shareholders of the corporation have been held liable as the alter ego of the corporation. (9 Witkin, Summary of California Law (9th ed. 1989), Corporations, Section 12.)

In the case here, however, the corporate veil has not been pierced. The individual majority ownership was determined based on the percentage of stock owned by the individual shareholders but no shareholders of RCRV or CRV, such as Mr. Davidson or Mr. Sambolin, have been held individually responsible or liable for the workers’ compensation insurance modification rates charged to RCRV or CRV. Rather, only the workers’ compensation loss experience of each entity has been combined to determine the experience modification rate applicable to both corporate entities. Under these circumstances, appellant is mistaken in its assertion that RCRV’s corporate veil has been pierced.

The Rating Plan does not make a distinction between types of entities when determining ownership. In other words, the Plan does not distinguish between partnerships, joint ventures, limited liability companies or corporations in determining ownership. The individual ownership of all of entities must be determined for the purposes of the combination of entities rule. (Rating Plan, Section II, paragraph 9.)