



# Maryland

## Department of Economic & Employment Development

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*J. Randall Evans*  
Secretary

*Board of Appeals*  
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*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

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— DECISION —

IN THE MATTER OF THE APPEAL OF:  
Trahan Films, Inc.

Decision No.: 32 -EA-92  
Date: August 12, 1992  
Exec. Determ. No.: 7640  
Employer Account No.:

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ISSUE: Whether the services performed by certain individuals for Trahan Films constitute employment covered by the Unemployment Insurance Law, within the meaning of Section 8-205 of the Labor and Employment Article.

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY, IN THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU DO BUSINESS.

THE PERIOD FOR FILING AN APPEAL TO COURT EXPIRES September 11, 1992

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— APPEARANCES —

**For the Appellant:**

Thomas Trahan, President  
Gregory Black, Esquire

**For the Secretary:**

John McGucken, Agency  
Counsel

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing before the Special Examiner. The Board has also considered all the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The Board of Appeals has also considered the legal argument presented at the hearing before the Board.

#### FINDINGS OF FACT

The Board of Appeals adopts as its findings of fact the first seven paragraphs of the Special Examiner's Findings of Fact, except that the control exercised by the employer was more than minimal.

In addition, the Board finds as a fact that the employer exercised some control over all the individuals in question in this case and that the services performed were not performed outside all of the places of business of Trahan Films. Since the business of the employer is the production of commercial advertising films, the studios and locations where the films are made are the places of business of this employer.

The services performed by all the individuals, including the employer's son, were performed for the corporation, Trahan Films, and not for Thomas Trahan.

#### CONCLUSIONS OF LAW

Section 8-205 states:

Work that an individual performs under any contract of hire is not covered employment if...:

(1) the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

(2) the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

(3) the work is:

(i) outside of the usual course of business of the person for whom the work is performed; or

(ii) performed outside of any place of business of the person for whom the work is performed.

In order for an individual who performs a service to be considered an independent contractor under this provision of the law, and therefore not covered by the Unemployment Insurance Law, all three parts of the test must be met.

In this case, the Board concludes that none of the individuals in question meet all three requirements of Section 8-205. These individuals perform under the control and direction of

the employer, and do not perform the services outside either the usual course of business or outside the places of business of Trahan Films. Therefore, it is not necessary for the Board to reach the issue of whether they all are customarily engaged in an independent business or occupation of the same nature. They are all in covered employment for the purposes of the Unemployment Insurance Law.

The employer argued that the employer's son was under the age of 21 at the time the services in issue were performed and therefore should be exempt from coverage because of the family relationship. However, Section 8-215 states:


Employment is not covered if performed:

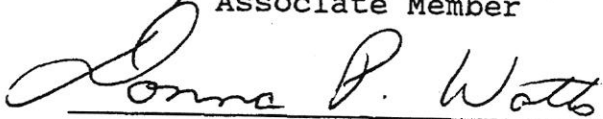
- (1) for a child or spouse; or
- (2) for a parent, by a child under the age of 21 years.

Since the services were performed for the corporation, Trahan Films, Inc. and not for Thomas Trahan personally, this exemption is not applicable.

#### DECISION

The services performed by the individuals listed in the attachment to this decision are considered covered employment, within the meaning of Section 8-205 of the Labor and Employment Article. The decision of the Special Examiner is modified.

  
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Associate Member

  
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Associate Member

  
\_\_\_\_\_  
Chairman

W:W:K

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DATE OF HEARING: August 4, 1992

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