



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer*  
Governor

*J. Randall Evans*  
Secretary

*Board of Appeals*  
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*Donna P. Watts, Associate Member*

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— DECISION —

IN THE MATTER OF THE APPEAL OF:	Decision No.:	29-EA-91
Springhill Memory Gardens	Date:	August 7, 1991
	Exec. Determ. No.:	6922
	Employer Account No.:	

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ISSUE: Whether services performed by sales managers and salesmen for the petitioner constitute employment under Section 20(g)(6) of the Unemployment Insurance Law.

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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 6, 1991

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— APPEARANCES —

For the Appellant:  
Not Present

For the Secretary:      John McGucken -  
                                 Legal Counsel  
                                 Jerry Placek -  
                                 Review Deter.  
                                 Unit Supvr.

EVALUATION OF THE EVIDENCE

This decision is based on the evidence presented at the three hearings before the special Examiner. After the Special Examiner issued his decision, both the Agency and Springhill Memory Gardens filed an appeal to the Board of Appeals. The Board granted the appeal and scheduled a hearing. At the hearing, Springhill Memory Gardens did not appear. The agency appeared, represented by its counsel, but it did not present any additional evidence. Only legal argument was made at the hearing before the Board of Appeals. The Board, therefore, will adopt the findings of fact made by the Special Examiner, excepting only those additional or changed findings specifically noted below.

## FINDINGS OF FACT

The Board adopts the findings of fact of the Special Examiner.

## CONCLUSIONS OF LAW

### 1. The Sales Agent

The Special Examiner concluded that the individual sales agents were employees of Springhill Memory Gardens within the meaning of Section 20(g)(6) of the Law. Under that section of the law, a person is deemed an employee, for unemployment insurance law purposes, irrespective of whether the common law relationship of master and servant exists, unless three specific criteria are met. The Special Examiner found that the individual sales agents did not meet any of the three criteria. First, he found that the non-competition agreement in the contract between them and the cemetery constituted an element of control within the meaning of Section 20(g)(i). In addition, he found that the criteria of subsection (ii) were not met, because these agents' sales were not outside of the ordinary course of business of the cemetery, nor was their work conducted outside of all places of business of the cemetery. Lastly, he found that there was insufficient evidence presented that they met the criteria of subsection (iii), since there was no proof that they were customarily engaged in an independent trade or business.

The Board agrees with all of these conclusions. The non-competition clause in the sales agents' contracts was an exercise of control over their activities, a type of control incompatible with the concept of an independent contractor. These non-competition agreements are also strong evidence that these sales agents were not customarily engaged in an independent business of a similar nature. In fact, these agreements substantially restricted these people from engaging in an independent trade or business. This contractual clause, therefore, not only shows that the requirements of subsection (i) were not met, but it also is good evidence that subsection (iii) was not satisfied. The Board recognizes that most of the sales were probably made off of the premises. Many of the sales, however, were made on the premises. In fact, one of the contracts in question in this case calls for the "full and complete use of a private office and salesroom for sales personnel" at both cemetery locations. Although this contract does not deal specifically with these sales agents, it is evidence which supports the oral testimony that some of the sales took place on the employer's premises.