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Supreme Court, Appellate Division, Third Department, New York

In the Matter of SARATOGA SKYDIVING ADVENTURES, Appellant,
v.
WORKERS' COMPENSATION BOARD, Respondent.

December 22, 2016

Facts: In August of 2014, a Workers' Compensation Board investigator made a visit to Appellant's airport field following a fatal airplane crash. While visiting, the investigator learned that Appellant did not have workers' compensation insurance and observed a worker, one of the independent contractors who works as a pilot and tandem jump instructor, moving parts of the airplane wreckage onto a Saratoga Skydiving truck. The investigator then issued a stop-work order against Appellant for failing to secure workers' compensation coverage (see Workers' Compensation Law §§50, 141-a [4]). Appellant applied for a redetermination review of the stop-work order, relying on an affirmation of its attorney asserting that Appellant had no employees (see 12 NYCRR 308.5), which the Uninsured Employer's Fund opposed (see Workers' Compensation Law §26-a [5]). A WCLJ denied the application and Appellant now appeals.

Holding: *Affirmed.*

Discussion: The issue on appeal was whether the stop-work order issued pursuant to workers' Compensation Law §141-a was correctly authorized. The Court outlined the following facts which supported the Board's decision. The pilots and jump instructors, based upon the nature of their work, were indispensable and integral to Saratoga Skydiving's business. Saratoga Skydiving was controlled, owned and operated by one person, Mr. Rawlins. Mr. Rawlins was the person who supplied all the equipment, including planes and parachutes, through companies solely owned and controlled by him. Mr. Rawlins also exercised control over the work, scheduling, services provided, selecting who to hire and whether the pilots should

be paid or discharged. Based on the stated facts the Court found that a stop-work order was correctly authorized.

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