

April 18, 2018

**ADVISORY OPINION AS TO BUILDING DEPARTMENT
INSPECTOR- OWNED CORPORATIONS**

Issue:

Synopsis: The Broward County Certification Committee has asked the attorney if it is permissible for an inspector employed by a municipality or private company to own a company or work for a company which works outside of Broward County in the capacity of a professional who has status as a licensed professional in their particular field.

There does not appear to be a challenge or a question at this time insofar as the employment prohibition for inspectors in Broward County. See Advisory Opinion Feb. 21, 2014. The issues seems to be that of employment under the auspices of a contract provider as inspector for an AHJ, while simultaneously working outside Broward County as a licensed professional.

Rule.

The Rules with respect to the creation of corporations are clear and fairly uniform whether general (F.S. 607), professional service (F.S. 621), or LLC (F.S. 605). There are different rules with respect to operational aspects of entities regarded as “closely held” corporations, particularly professional service corporations.

A closely-held corporation, also called a close corporation, is generally defined as a corporation in which the stock is not freely traded and is held by only a handful of shareholders. Closely held corporations are often times created as single purpose or single objective entities. Single objective entities are generally formed to accomplish an objective and once the objective is attained, the corporation’s status may be allowed to lapse or is dissolved. Single purpose entities are generally created to serve as a platform from which to conduct ongoing business such as medical, engineering, architectural, or legal practices.

Closely held corporations are more closely scrutinized where the actual purpose may be to serve as a vehicle to conduct business which an individual may not otherwise engage. These are recognized as “sham” corporations and in particular where the distinction between individual and corporate interests merge or become indistinguishable as in cases where a conflict of interest would otherwise arise.

Analysis:

It has been established that an inspector; 1) may not inspect any work which may have been performed by a competitor and, 2) not allow his/her license to be used [i.e. to act as a qualifier] by another person or firm. See Chapter 71-575, Laws of Florida, Special Acts of 1971. Section 9.02 , Broward County Code of Ordinances.

In the instance of a professional service corporation, the professional must necessarily use the individual's license to create, own or transfer ownership of the firm. In the creation of an LLC or a general corporation, the law doesn't require that a professional expressly state the purpose of the corporation, however the actions of the entity serve to establish its purpose.

In the issues presented, a licensed, qualified inspector under the employ of Broward County or one of its municipalities would be acting as the sole- or one of a few-officers of a corporation which is being used as essentially a "cover" for activities which the inspector could not otherwise perform as a matter of law. This is the essence of a "sham" corporation i.e., one which is formed for an unlawful purpose. So, too, one which is ultimately used for an unlawful purpose.

In Walton v. Tomax Corp., 632 So. 2d 178, (Fla. 5th DCA1994), a homeowner sued a developer for breach of contract. After obtaining a verdict in its favor, the homeowner sought to enforce judgment and the developer filed for bankruptcy. During the course of post judgment proceedings, the developer filed for bankruptcy and it was learned that all of the money which had been in the accounts of the developer were transferred to the accounts of the corporation's president and CEO. The court ruled that the officer had improperly merged his interests with those of the corporation and the actions were done to perpetrate an unlawful action and was therefore personally liable.

Where the actions of the owner are indistinguishable from the actions of the entity, there is a merger of interest and a merger of identities.

In Vantage View v. Bali E. Dev. Corp., 421 So. 2d 728, (Fla. 4th DCA 1982), a condominium association brought suit against a developer and a lender where the developer and the lender's identities were indistinguishable as the result of subsidiary status, similarity of persons and similarity of interests. The Vantage court stated:

So it is that courts will look through the screen of corporate entity to the individuals who compose it in cases in which the corporation is a mere device or sham to accomplish some ulterior purpose, or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose.

Vantage View at 733.

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See also: USP Real Estate Inv. Trust v. Discount Auto Parts, Inc., 570 So. 2d 386, (Fla. 1st DCA 1990). (“The overwhelming weight of authority is to the effect that courts will look through the screen of corporate entity to the individuals who compose it in cases in which the corporation was a mere device or sham to accomplish some ulterior purpose, or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose.”)

Conclusion:

The creation of a corporate entity to be used as a vehicle for a Broward building inspector to conduct business independently, is a fraudulent practice and a sham as a matter of law. An inspector employed with a Broward county municipality may not set up a corporation to avoid the limitations set forth under Special Act 71-575.

Respectfully,

Charles M. Kramer, Esq. for
The Broward County Board of Rules and Appeals