CASE NO. 6001 CRB-2-15-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 200176822

VICTOR MELENDEZ, JR. : WORKERS' COMPENSATION
CLAIMANT-APPELLEE COMMISSION

v. : JUNE 10, 2016

FRESH START GENERAL REMODELING
& CONTRACTING, LLC
NO RECORD OF INSURANCE
EMPLOYER

and

MICHAEL GRAMEGNA
NO RECORD OF INSURANCE
EMPLOYER
RESPONDENT-APPELLANT

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was represented by Jon D. Golas, Esq., Golas Law Firm, 249 East Center Street, Manchester, CT 06040.

In proceedings below, respondent Fresh Start General Remodeling & Contracting was represented at times by Michael Gramegna, its principal, and at times by John L. Laudati, Esq., Murphy, Laudati, Kiel, Buttler & Rattigan, 10 Talcott Notch Road, Suite 210, Farmington, CT 06032.

In proceedings below, respondent Michael Gramegna was self-represented at times and represented at times by John L. Laudati, Esq., Murphy, Laudati, Kiel, Buttler & Rattigan, 10 Talcott Notch Road, Suite 210, Farmington, CT 06032. At oral argument, Gramegna was represented by Attorney Laudati.

The Second Injury Fund was represented by Richard Hine, Esq., Assistant Attorney General, State of Connecticut, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the June 2, 2015 Finding and Award of David W. Schoolcraft, Commissioner acting for the Eighth District, was heard on February 19, 2016 before a Compensation Review Board panel consisting of Chairman John A. Mastropietro and Commissioners Ernie R. Walker and Nancy E. Salerno.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. Respondent Michael Gramegna has petitioned for review from the June 2, 2015 Finding and Award of David W. Schoolcraft, Commissioner acting for the Eighth District. We find no error and accordingly affirm the decision of the trial commissioner.[1]

We note at the outset the somewhat intricate procedural history of this claim. On September 14, 2012, a formal hearing was held before the trial commissioner acting for the Second District on the issue of compensability of the injuries sustained by the claimant as a result of a motor vehicle accident on January 13, 2012. Additional issues included entitlement to temporary total and temporary partial disability benefits; computation of claimant's average weekly wage and compensation rate; liability for medical care rendered to the claimant; and whether respondent Fresh Start General Remodeling & Contracting, LLC, had workers' compensation insurance on the date of injury. The record closed on November 26, 2012 with the claimant having submitted a

[1] We note that oral argument in this matter was postponed for one month for administrative reasons and a Motion for Continuance was also granted during the pendency of this appeal.

brief but not the respondent. On March 26, 2013, the trier issued a Finding and Award in favor of the claimant.[2] On March 18, 2015, the same trial commissioner, then acting for the Eighth District, issued a Finding and Order vacating the March 26, 2013 Finding and Award as to Michael Gramegna and allowing Gramegna additional time to prepare and submit proposed findings and/or a brief.[3] On April 30, 2015, Gramegna filed a brief and the claimant elected to stand on his prior submissions. The record closed effective April 30, 2015 and on June 2, 2015, the trial commissioner issued a second Finding and Award. On September 23, 2015, respondent Fresh Start General Remodeling and Contracting, LLC, withdrew its appeal against the March 18, 2015 Finding and Order, and the remaining appeal arises from Gramegna's challenge to the June 2, 2015 Finding and Award.

The trial commissioner, having incorporated by reference any factual findings contained in the March 3, 2015 Finding and Order not expressly restated in the June 2, 2015 Finding and Award, made the following factual findings which are pertinent to our review. In the autumn of 2011, the claimant, a self-employed window washer and laborer, had approximately twenty commercial clients in the Manchester area for whom he would wash windows. He testified that he had window-washing jobs on most weekdays and, in addition, would take occasional side jobs such as roofing, siding or

[2] The March 26, 2013 Finding and Award identified the respondent as Fresh Start Remodeling & Contracting, LLC, which was represented by its principal, Michael Gramegna.

[3] The Motion to Vacate was granted on the basis of evidence proffered at the formal hearing of May 8, 2014 attesting to the difficulties encountered by the Workers' Compensation Commission in attempting to provide notification of hearings to the respondent at his various mailing addresses. In the March 18, 2015 Finding and Order, the trial commissioner stated that he did "not believe Mr. Gramegna, personally, can be said to have received meaningful notice of the deadline for submission of his proposed findings and/or brief." Conclusion, ¶ H. As such, the trier concluded that Gramegna's lack of opportunity to fully defend the claim against him constituted a deprivation of due process, and the trier granted Gramegna until April 17, 2015 to file his proposed findings and/or a brief.

landscaping. At all times relevant to this case, the claimant did not own a motor vehicle or hold a driver's license. Respondent Michael Gramegna, who owned a residence in Bolton as well as several rental properties in Manchester, Connecticut, was the principal of Fresh Start Realty, LLC, and the principal and agent for service of Fresh Start General Remodeling & Contracting, LLC [hereinafter "Fresh Start"]. In 2011, Fresh Start, whose business address is 122 Oakland Street in Manchester, Connecticut, worked on approximately fourteen projects and reported gross revenues of roughly $275,000.00.

In addition to the formal business relationships with the skilled tradesmen that Gramegna used on Fresh Start jobs, Gramegna also had less formal relationships with individuals who owed him money whom he would allow to work off the debt by performing short-term work on his various properties. Gramegna described these situations as an effort to help out acquaintances in need, although if these individuals proved to be reliable and skilled, Gramegna would sometimes continue to employ them and issue them a Form 1099. In September or October of 2011, Gramegna was introduced to the claimant by the claimant's girlfriend, who happened to be friends with Gramegna's girlfriend, Channing Courtney. The claimant and his girlfriend, who were expecting a baby, were living in a single room in an apartment they shared with another person. They wanted to move to a larger space and needed money. Meanwhile, Gramegna and Courtney were planning to move from their home in Manchester to a house in Bolton, and Gramegna decided to hire the claimant to help out with the move. At that time, Fresh Start was also working on a renovation project in Avon.

Initially, Gramegna utilized the services of the claimant in helping to pack up the Manchester home and getting the house in Bolton ready. At some point, Gramegna also brought the claimant to the Avon job site to speed up the completion of the work there so Gramegna could get back to moving into his new home. Gramegna paid the claimant $8.00 per hour and testified that he would have paid him more but the claimant did not have any of his own tools and needed transportation to and from the job sites. Gramegna also gave the claimant a T-shirt and baseball cap with the company's name on them; he testified that the shirt and cap were a form of free advertising, but he did expect the claimant to wear these items when he was at the Avon job site. At the Avon site, the claimant helped Gramegna paint a bathroom, chop and lay tile, and do general clean-up. The Avon job was completed by November 17, 2011, with the claimant having worked there for a little less than two weeks. During that time, the claimant continued to be paid in cash by Gramegna, who did not issue the claimant a Form 1099 because he did not consider him to be a contractor.

Gramegna and Courtney officially moved into the Bolton residence in late November 2011, and Gramegna continued to use the services of the claimant to cut down trees, split and stack firewood, and do other chores "to make the house livable." September 14, 2012 Transcript, p. 43. The claimant also performed such tasks as painting, putting up dry wall, sanding joint compound, and assisting Gramegna with laying tile in the bathrooms. Though the claimant did not have a formal start or quit time while working at Gramegna's residence, the claimant generally worked four or five days a week. He was not required to work every day and, in fact, if the claimant had a

window-washing job scheduled, Gramegna encouraged the claimant to do that instead. Except for the approximately ten days the claimant accompanied Gramegna to the Avon site, the claimant was not required to wear a uniform while working. The claimant testified that he earned approximately $300.00 a week in earnings from Gramegna, a figure that is consistent with the respondent's estimate. He was paid in cash every Friday.

On the days when the claimant worked for Gramegna, either Courtney, another worker, or Gramegna himself would pick up the claimant at home and drive him to the work site because the claimant did not have a car or a driver's license. On Friday, January 13, 2012, Courtney picked up the claimant and drove him to a diner in Manchester where they had breakfast with Gramegna. The claimant was wearing his Fresh Start clothes. During breakfast, Gramegna said he did not feel like working that day but the claimant was welcome to go to the Bolton house and split firewood if he wanted to make some money. The claimant elected to do so, and after breakfast, he got back into the car with Courtney and they proceeded to follow Gramegna's vehicle towards Bolton. The 1999 Toyota driven by Courtney was owned by Fresh Start.

While driving, Courtney lost control of the vehicle and it went off the road and rolled over, striking a tree and a fence before stopping. The claimant was extricated from the vehicle and taken by Life Star to Hartford Hospital where he was admitted and underwent surgery to repair a fracture of his right hip socket and iliac bone. After being discharged from Hartford Hospital on January 19, 2012, the claimant was sent to the Westside Care Center in Manchester, and was discharged from that rehabilitation facility

on February 21, 2012. Hartford Hospital billed $73,285.35 for the claimant's hospitalization from January 13, 2012 through January 19, 2012. Westside Care Center billed $12,959.12 for its services from January 19, 2012 through February 21, 2012. Medicaid paid $29,261.70 for the claimant's medical care during the period from January 13, 2012 through April 26, 2012.

No workers' compensation insurance coverage was in force on January 13, 2012 for either Fresh Start or Gramegna, individually. On January 27, 2012, the claimant, through his attorney, filed three Form 30C notices of claim with the Second District Office. One identified the employer as Fresh Start General Remodeling & Contracting, LLC. Another identified the employer as Fresh Start Realty, LLC. The third identified the employer as Michael Gramegna. All three were mailed to Manchester at the 122 Oakland Street address and were signed for by Courtney on January 31, 2012. The three Forms 30C were incorporated by this commission into a single case file captioned "Victor Melendez, Jr. vs. Fresh Start General Remodeling & Contracting, LLC."

As mentioned previously herein, the March 26, 2013 Finding and Award was vacated on March 18, 2015 as to Gramegna, and Gramegna was given an opportunity to file proposed findings and/or a brief. On April 30, 2015, Gramegna filed a brief wherein he primarily argued that he had not been a properly noticed party to the original formal hearing and that he had been "misled" into thinking he was not individually liable. Findings, ¶ 63. Gramegna also alleged that the claimant had been an independent contractor rather than an employee. The claimant declined to submit an additional response, choosing instead to rely on his submissions from the formal hearing of 2012.

At the formal hearing of September 14, 2012, the claimant introduced an IRS Form 1040-EZ prepared by H&R Block reflecting annual earnings of $3,410.00 for 2011. Although it was clear from the claimant's testimony that the document was never filed with the IRS, and the claimant testified that he "had no idea where the figure of $3,410.00 came from," Findings, ¶ 67, it was apparent that the claimant had only included income which would support his claim for workers' compensation benefits as to Gramegna. While the origins of this figure are unknown, Gramegna testified that he believes the figure accurately represents the total sum he paid to the claimant during the entirety of their working relationship.

The claimant worked for Gramegna for eleven weeks, averaging 38.75 hours per week. His average weekly wage as of January 13, 2012 was $310.00 and his tax filing status was single with one exemption. The claimant's pay was based entirely on the number of hours he reported having worked and not on the amount of work he accomplished during those hours. The claimant did not have his own tools and was therefore reliant upon Gramegna to provide the necessary tools and materials. Gramegna dictated where the claimant would work and what he would be doing. Gramegna also "exercised a significant degree of control over the claimant's hours," Findings, ¶ 73, given that he provided the claimant with transportation to and from the work sites. Moreover, although the claimant was self-employed as a window washer, he tried to schedule those jobs for the weekends so as to avoid interfering with his chance to earn hourly wages from Gramegna during the week.

Based on the foregoing, the trial commissioner, noting that his "assessment of the evidence [focused] on the areas where there is agreement in the testimony of the claimant and the respondent," Conclusion, ¶ B, concluded that the fact that Gramegna provided the claimant with transportation gave him "actual control over the claimant's work schedule on the days he did work." Conclusion, ¶ D. The trier also determined that Gramegna "had the authority to direct the means and order of the work performed by the claimant." Conclusion, ¶ E. In addition, although Gramegna may not have always supervised the claimant when he was splitting and stacking wood, the tools necessary to accomplish these tasks were provided by Gramegna, and Gramegna "controlled the hours of the claimant's wood splitting by both his possession and control of the premises and by providing the claimant with transportation necessary to get to, and from, the site." Conclusion, ¶ G. Gramegna also had the authority to redirect the claimant to another task at any given time.

The trial commissioner concluded that because the "duties the claimant may have performed at the Avon worksite were controlled by Mr. Gramegna and did not represent independent employment," Findings, ¶ H, the claimant satisfied the definition of "employee" pursuant to § 31-275(9)(A)(i) C.G.S.[4] In attempting to ascertain which of the respondent's entities involved in this matter could be construed as the claimant's employer, the trier noted that Gramegna "clearly considered the claimant unskilled and, lacking the tools of the trade, did not consider him to be part of his remodeling company's formal work crew," Conclusion, ¶ L, and "there is no evidence that the

[4] Section 31-275(9)(A)(i) C.G.S. (Rev. to 2011) defines "employee" as "any person who: [h]as entered into or works under any contract of service or apprenticeship with an employer, whether the contract contemplated the performance of duties within or without the state."

claimant was employed in the trade or business of Fresh Start General Remodeling & Contracting, LLC at the time of his injury." Id. The trial commissioner similarly could find no evidence to support the inference that an employment relationship existed between the claimant and Fresh Start Realty, LLC. The trier stated that he was:

> satisfied that on or about October 29, 2011, the claimant … entered into a contract of service with Mr. Gramegna to perform various services about Mr. Gramegna's properties and, for a limited period of time in November 2011, to assist him in work being performed elsewhere by his company, Fresh Start General Remodeling & Contracting, LLC.

Conclusion, ¶ M.

The trial commissioner concluded that during the period from October 29, 2011 to January 13, 2012, "the respondent Michael Gramegna was a person using the services of one or more employees for pay and was, therefore, an 'employer' for purposes of the Workers' Compensation Act."[5] Conclusion, ¶ N. Moreover, even though "most of the claimant's work was performed for purposes not associated with Mr. Gramegna's trade or business, his work schedule was consistent and he averaged 38.5 hours of work per week. As such, his employment by Mr. Gramegna was not casual employment."[6] Conclusion, ¶ O. In addition, although most of the work performed by the claimant for Gramegna was at Gramegna's residence, the claimant "was regularly employed to work

[5] Section 31-275(10) C.G.S. (Rev. to 2011) states, in pertinent part, that "[e]mployer" means any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, the state and any public corporation within the state using the services of one or more employees for pay…."
[6] Section 31-275(9)(B)(ii) C.G.S. (Rev. to 2011) states that "'employee' shall not be construed to include: [o]ne whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business."

well in excess of 26 hours per week."[7] Conclusion, ¶ P. Finally, given that "[p]roviding the claimant with transportation to and from work was an integral and necessary part of the employment contract between Mr. Gramegna and the claimant," and the claimant's need for transportation was reflected in his reduced rate of pay, the trial commissioner concluded that the injuries sustained by the claimant in the motor vehicle accident on January 13, 2012 arose out of and in the course of the claimant's employment with Gramegna. Conclusion, ¶ Q.

The trier further determined that because the medical reports submitted into the record indicate that the claimant was hospitalized from the date of the accident until February 21, 2012, it could be reasonably inferred that the claimant was disabled from performing any gainful employment during this period and the claimant was therefore eligible for five weeks and four days of temporary total disability benefits.[8] The trier also concluded, based on the testimony regarding the number of hours worked and total wages paid, that the claimant's average weekly wage was $310.00, and the claimant's earnings from his self-employment as a window washer were not material to the calculation of the claimant's wage rate. In addition, the trial commissioner determined that the medical services provided to the claimant represented "reasonable and necessary medical treatment" and therefore were Gramegna's financial responsibility.[9] The trier ordered

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[7] Section 31-275(9)(B)(iv) C.G.S. (Rev. to 2011) states that "'employee' shall not be construed to include: [a]ny person engaged in any type of service in or about a private dwelling provided he is not regularly employed by the owner or occupier over twenty-six hours per week."

[8] The claimant offered no evidence which might reasonably support a claim for temporary partial disability benefits following his release from in-patient care.

[9] Section 31-294d(a)(1) C.G.S. (Rev. to 2011) states, in pertinent part: "The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service,

Gramegna to pay the claimant 5.57 weeks of temporary total disability benefits in the amount of $1,295.03 and found Gramegna liable for the costs of the medical treatment provided to the claimant by Life Star, Hartford Hospital and Westside Care Center during the period of January 13, 2012 to February 21, 2012.

Gramegna [hereinafter "respondent"] has appealed the June 2, 2015 Finding and Award on two primary grounds.[10] First, he asserts that the trial commissioner erroneously concluded that the claimant was an employee within the meaning of the Workers' Compensation Act, given that the claimant was not "regularly employed" by him and the claimant's work for him was "casual."[11] Gramegna also contends that as he was not a named respondent in the subject proceedings, and was not "afforded reasonable notice that he was potentially liable as an individual," Appellant's Brief, p. 14, the trial commissioner's decision to find him personally liable constituted error and the findings and orders against him violated his constitutional right to due process. We find neither of the respondent's arguments persuasive.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), citing Fair v. People's

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including medical rehabilitation services and prescription drugs, as the physician or surgeon deems reasonable or necessary…."

[10] We note that the claimant did not file a Motion to Correct; as a result, "we must accept the validity of the facts found by the trial commissioner and this board is limited to reviewing how the commissioner applied the law." Corcoran v. Amgraph Packaging, Inc., 4819 CRB-2-04-6, 4948 CRB-2-05-5 (July 26, 2006).

[11] See footnotes 6, 7, supra.

Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540 (1988), quoting Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

The respondent has claimed as error the trial commissioner's conclusion that the claimant was his employee within the meaning of the Workers' Compensation Act. It is of course well-settled that "[t]he burden in a workers' compensation claim rests upon the claimant to prove that he is an 'employee' under the act and thus is entitled to invoke the act…." (Internal citations omitted.) Castro v. Viera, 207 Conn. 420, 426. "The entire statutory scheme of the Workers' Compensation Act is directed toward those who are in the employer-employee relationship as those terms are defined in the act and discussed in our cases." Id., 433. As such, "[t]hat relationship is threshold to the rights and benefits under the act; a claimant or his representative who is not an employee has no right under this statute to claim for and be awarded benefits." Id.

As previously mentioned herein, the Act excludes from the definition of "employee" any individual "whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business,"

§ 31-275(9)(B)(ii) C.G.S., as well as "any person engaged in any type of service in or about a private dwelling provided he is not regularly employed by the owner or occupier over twenty-six hours per week." § 31-275(9)(B)(iv) C.G.S. In the matter at bar, the respondent disputes the trier's finding that the claimant was "regularly employed" by the respondent and cites as error the trier's failure to find that the work performed by the claimant for the respondent was "of a casual nature." In support of these assertions, the respondent points to our Supreme Court's analysis in Smith v. Yurkovsky, 265 Conn. 816 (2003) for the proposition that because the instant claimant was employed for "only eleven weeks," Appellant's Brief, p. 9, the employment was not of sufficient duration to support the conclusion that the claimant was an employee. In light of the factual distinctions in Smith, we do not find persuasive the respondent's interpretation regarding the applicability of the case.

In Smith, a claim for workers' compensation benefits was brought by a home-health aide who alleged that she had sustained injuries while caring for her client, an Alzheimer's patient. Although the claimant initially worked between four and nine hours a week, the number of hours worked increased over time, and went up sharply during tax season because the client's son managed a tax preparation service and required extra assistance in caring for his mother during that time of year. As Gramegna accurately points out, the Smith court "[rejected] the use of averaging as a means to determine regular employment," Id., 821, holding instead "that fifty-two weeks – one full year – is the period of time that is reasonable for purposes of measuring the hours that the plaintiff worked in order to determine whether she was 'regularly employed' under the

act." Id. However, we note that the Smith claimant was hired on July 1, 1995 and alleged a date of injury of April 16, 1998, some two years and nine months later. As such, the specific time frame recommended by the Smith court is inapplicable to the matter at bar, given that the claimant only worked for the respondent for a few months, and it cannot be reasonably inferred from the court's analysis in Smith that the legislature intended to automatically bar workers' compensation claims brought by claimants who are employed for less than one year. However, we do find that the following observation by the Smith court is instructive to our analysis of the instant claim:

> We conclude that regular employment is to be determined by the employer's usual practice in using an employee for a majority of the applicable time period. We look to the practice during the majority of the applicable period because we have construed "regular employment" to be that which is done most of the time. When it is said that an employer regularly employs an employee, "it is meant that he usually does so, or that he does so most of the time, so that such employment becomes the rule and not the exception." (Emphasis in the original; internal quotation marks omitted.)

Id., 827, *quoting* France v. Munson, 125 Conn. 22 (1938).

In the matter at bar, the claimant testified at trial that the respondent agreed to pay him $8.00 an hour and that he made approximately $300.00 a week during the time period he worked with Gramegna. September 14, 2012 Corrected Transcript, p. 26. The claimant repeatedly stated that he worked for Gramegna four to five days a week, id., 28, 40, 47, and also indicated that on the days he worked for Gramegna, he would typically work six to ten hours a day. Id., 47. The claimant explained that when he first began working with Gramegna, he assisted with demolition tasks at the Avon worksite, and when the Avon job was finished, he then helped Gramegna with the move to his home in

Bolton. In addition to helping Gramegna pack and unpack his personal belongings, the claimant also cut, split and stacked firewood and assisted Gramegna with some indoor remodeling tasks; at trial, Gramegna commented that he and the claimant had worked at the Bolton property for a month and a half or two months. Id., 38. The claimant testified that even though he still had his own business washing windows, he only did that on the weekends because he was working with Gramegna five days a week, id., 50, and he preferred to make money working for Gramegna rather than washing windows. Id., 53.

Similarly, Gramegna testified that he recalled paying the claimant approximately $3,000.00 to $3,500.00 in total over the weeks that the claimant worked for him, and indicated that he relied upon the claimant to let him know how many hours he'd worked so he could pay him "[e]very Friday when I paid everyone else that worked for me." Id., 103-104. Gramegna stated:

> It wasn't really eight dollars an hour, it was more like nine for compensation for having to give him all the tools and pick him up every day. I didn't really want to do it. I didn't really want to go out there every day. I went far out of my way daily to go to Manchester to get him.

Id., 103.

When canvassed by the trial commissioner, Gramegna acknowledged that if the $3,410.00 figure appearing on the claimant's purported tax return was accurate, the claimant would have worked for him a total of 426.25 hours over the course of ten to sixteen weeks. Id., 117. Gramegna stated that "it was more like 34 to 40 [hours] every week. So I'd guess it was about sixteen, probably sixteen weeks. It was really close to a three and a half, four month period." Id.

Having reviewed the foregoing, we find that testimony offered by both the claimant and the respondent clearly provided a reasonable basis for the trial commissioner's conclusion that even though most of the work performed by the claimant occurred at Gramegna's personal residence, the claimant "was regularly employed to work well in excess of 26 hours a week," Conclusion, ¶ P, and, as such, was not excluded from the definition of "employee" on the basis of the provisions in § 31-275(9)(B)(iv) C.G.S. Moreover, it can be reasonably inferred from the trier's findings that he found the claimant's testimony credible, and because such determinations are "uniquely and exclusively the province of the trial commissioner," Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008), they are not subject to reversal on review.

Gramegna also asserts that the claimant should also have been excluded from the definition of "employee" on the basis of § 31-275(9)(B)(ii) C.G.S. because the work performed for Gramegna was "casual in nature" and the claimant was employed "otherwise than for the purposes of the employer's trade or business." Gramegna correctly notes that it is necessary to distinguish between the trade or business of Fresh Start General Remodeling & Contracting, LLC, and that of Michael Gramegna individually because the trier found Gramegna liable individually rather than finding the claimant had been employed by either Fresh Start Realty, LLC, or Fresh Start General Remodeling & Contracting, LLC. Gramegna also points out that he did not employ the claimant "in the context of any trade or business" in his individual capacity. Appellant's Brief, p. 9. Nevertheless, even if the trier reasonably inferred that the claimant was not employed in any trade or business of Gramegna individually, he also would have had to

determine that the claimant's employment was "casual in nature" in order for both prongs of this exception to the definition of employee to be fully satisfied. Instead, the trier concluded that even though "most of the claimant's work was performed for purposes not associated with Mr. Gramegna's trade or business, his work schedule was consistent and he averaged 38.5 hours of work per week. As such, his employment by Mr. Gramegna was not casual employment." Conclusion, ¶ O.

In Thompson v. Twiss, 90 Conn. 444 (1916), our Supreme Court stated:

> "casual employment" means the occasional or incidental employment; the employment which comes without regularity. It is in this sense the word is used in our act rather than in the sense of an employment arising through accident or chance….

Id., 451.

After discussing the distinction between workers' compensation acts which ascertain the meaning of the word "casual" based on the terms of the contract of service versus the nature of the services rendered, the Thompson court remarked:

> If the employment be upon an employer's business for a definite time, as for a week, or a month, or longer, it is not a casual employment, whether we regard the contract of service or the nature of the service. So, too, if the employment be for a part of one's time at regularly recurring periods of time, it is not a casual employment, whether we regard the contract of service or the nature of the service.

Id.

The respondent claims that the employment relationship between him and the claimant satisfied the definition of casual employment because "[n]othing in the evidence or the findings supports a conclusion that the claimant was hired to assist Mr. Gramegna for any definite or regular period of time or that there existed a fair expectation of the

work continuing for a reasonable time." Appellant's Brief, p. 12. We concede that the record is devoid of testimony which would illuminate the parties' expectations regarding how long the employment relationship might have continued had it not been terminated by the motor vehicle accident of January 13, 2012. Nevertheless, as discussed previously herein, both the claimant and Gramegna offered consistent testimony regarding the parameters of their employment relationship relative to the number of hours worked by the claimant and the remuneration he received for his services. We therefore find the trial commissioner's conclusions in this regard adequately reflect our Supreme Court's reasoning in Thompson, supra, and are not inclined to overturn these findings on appeal.

The respondent also contends that because he was neither a named respondent in the proceedings below nor "afforded reasonable notice that he was potentially liable as an individual," the trial commissioner's conclusion that he was individually liable constituted error and a deprivation of due process. Appellant's Brief, p. 14. The respondent argues that the original Finding and Award of March 26, 2013 identified as the threshold issue "whether there was an employer/employee relationship between the claimant and respondent Fresh Start on January 13, 2012," and, as such, it "explicitly and unequivocally excluded any possibility that he might be personally liable." Id., 14-15. Moreover, the line of questioning pursued at trial seemed to reflect both parties' belief that the focus of the inquiry was on whether Fresh Start was liable to the claimant, and "no excuse exists for the failure of claimant's counsel to state clearly that the claimant sought to hold Mr. Gramegna personally liable. Everyone present knew that Mr.

Gramegna was representing Fresh Start, and yet no one even questioned how this might be so if he faced personal liability for injuries arising out of the same accident." Id., 18.

The respondent further asserts that none of the Commissioners of the Superior Court present at the formal hearing of September 14, 2012 "so much as mentioned the notion that this lay person might not be competent to represent a limited liability company when he had a direct conflict of interest" id., and Gramegna

> was not fairly apprised of the fact that he faced personal liability for the claimant's injuries. It would be manifestly unjust to suggest that he, a lay person, should have picked up on this idea when all notices, orders, and proceedings focused on the question of whether Fresh Start was the entity liable.

Appellant's Brief, p. 23.

It is therefore the the respondent's position that because "Mr. Gramegna did not receive reasonable notice that he faced personal liability … the awards and orders entered in this matter violate his constitutional right to due process." Id., 23-24.

In Raphael v. Connecticut Ballet, Inc., 5985 CRB-7-15-2 (December 10, 2015), this board was confronted with a fact pattern wherein the claimant, who was also the principal of the employer, chose to represent himself at formal proceedings. On appeal, the claimant raised a claim of error similar to that raised by the instant respondent, alleging that the trial commissioner "failed to advise" him regarding the conflict of interest inherent in appearing as both the claimant and the "alter ego" of the employer. We were not persuaded by the Raphael claimant's interpretation of the proper role of a trial commissioner dealing with self-represented parties then and we are not so persuaded now. Rather, we pointed out that:

> the trial commissioner is not charged with the responsibility of "advising" the parties who appear before him during the course of the trial. The trial commissioner is expected to review the evidence submitted by the parties and to issue a decision on the merits. The trial commissioner may also insure that no unfair advantage is taken of the *pro se* claimant but may not litigate her case for her.

Flood v. Travelers Property & Casualty, 5267 CRB-1-07-8 (December 8, 2008).

In the matter at bar, our review of the transcript indicates that at the commencement of formal proceedings on September 14, 2012, the trial commissioner began accepting as exhibits the various Forms 30C sent by claimant's counsel to Fresh Start Realty, Michael Gramegna, and Fresh Start General Remodeling & Contracting, LLC, respectively. Although Gramegna raised an objection to the admittance of the Form 30C sent to Fresh Start Realty on the basis that he didn't know why Fresh Start Realty had been implicated in the matter, he subsequently raised no objection to the admission of the Forms 30C addressed to him personally and to Fresh Start General Remodeling & Contracting, LLC.[12] In addition, later in the trial, after being shown the three green cards associated with the Forms 30C, Gramegna's girlfriend, Channing Courtney, testified that she had signed all of them. September 14, 2012 Corrected Transcript, p. 79. Subsequently, at the formal proceedings held on May 8, 2014, claimant's counsel reiterated that he had served a Form 30C on Gramegna individually, Transcript, p. 15, and stated, "Commissioner, bottom line, the 30C notice was filed so then we could proceed against the individual." Id., 45.

[12] The trial commissioner overruled Gramegna's objection on the basis that the Forms 30C were being admitted as "background information" only, given that the date of injury was within one year of the Forms 30C and Gramegna had not challenged the claimant's compliance with the statute of limitations. September 14, 2012 Corrected Transcript, pp. 8-9.

In light of the discussion attendant upon the submission into evidence of the three Forms 30C at the September 2012 hearing, and given claimant's counsel's remarks at the May 2014 hearing, we reject the respondent's assertion that "none of the participants appeared even to consider the notion that Mr. Gramegna was potentially liable as an individual." Appellant's Brief, p. 15. The claimant clearly contemplated from the outset that Gramegna might be found individually liable, and served him accordingly. However, it is obvious that Gramegna failed to appreciate the legal significance of the various Forms 30C served upon him at the commencement of the claim. This is particularly so given that despite the fact that a Form 30C naming him individually was entered into evidence at the hearing of September 14, 2012, Gramegna subsequently testified at the hearing of May 8, 2014 that he didn't know if he had received a Form 30C naming him individually because he didn't know what a Form 30C was.[13]

Our review of the instant record reveals that Gramegna was advised to obtain counsel on more than one occasion. At the May 2014 hearing, the representative for the Second Injury Fund stated, "[t]he only issue before this tribunal is the motion to reopen. Mr. Gamegna, I advised him on two occasions as to representation of counsel before we even got into formals, you advised him of representation of counsel." Id., 35. The trial commissioner also observed that "[w]e certainly did discuss the idea of having an attorney and I believe his response was he didn't have the money." Id. When queried at the May 2014 hearing by claimant's counsel as to what arguments he would put forward

[13] At the formal hearing of May 8, 2014, when questioned under cross-examination as to whether he had received the 30C notice, the claimant replied: "I don't think I received it. I don't know. I can't honestly say yes or no to that because I don't know what a [Form] 30C is. Everything that I received that I did receive I assumed was for my company. I don't think anything, I never had any thought process that any of it was for me specifically." May 8, 2014 Transcript, p. 55.

in his brief that might change the outcome of the case, Gramegna said he wasn't sure because he hadn't realized his personal liability was at issue, stating "I wasn't under the interpretation that I was representing both myself and my company at the same time. If I did, I probably wouldn't have represented myself the same way. I probably would have borrowed money to get an attorney at that point." May 8, 2014 Transcript, p. 54.

This board has previously observed that a litigant "who undertakes self-representation does so at his or her own risk, a risk which rises commensurately with the complexity of the claim." Raphael, supra. Id. Clearly, the cost to Gramegna for his failure to appreciate the legal significance of the Form 30C served upon him in his individual capacity is high. It may also be reasonably inferred that he failed to appreciate the legal ramifications of the testimony offered as the formal proceedings unfolded. Nevertheless, we reject the contention that the trial commissioner in this matter was required to advise Gramegna once Gramegna had elected to proceed without benefit of counsel. As this board pointed out in Raphael, supra, neither the provisions of § 31-278 C.G.S., which articulates the powers and duties of commissioners, nor § 31-298 C.G.S., which governs the conduct of hearings, in any way suggest that a trial commissioner is required to serve as an advisor to a self-represented litigant.[14] We also find unpersuasive

[14] Section 31-278 C.G.S. (Rev. to 2011) states, in pertinent part: "Each commissioner shall, for the purposes of this chapter, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue as he may find proper, and shall have the same powers in reference thereto as are vested in magistrates taking depositions and shall have the power to order depositions pursuant to section 52-148. He shall have power to certify to official acts and shall have all powers necessary to enable him to perform the duties imposed upon him by the provisions of this chapter…."

Section 31-298 C.G.S. (Rev. to 2011) states, in pertinent part: "Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond such informal notices as the commission approves. In all cases and hearings under the provisions

the notion that either the trial commissioner or the other attorneys attending the hearings were somehow responsible for explaining to Gramegna the legal implications of the evidence being adduced at trial.[15]

The record indicates that by the time of the May 2014 hearing on the Motion to Vacate, Gramegna had obtained counsel, who successfully persuaded the trial commissioner to vacate the March 26, 2013 Finding and Award in order to allow Gramegna to file a brief. Gramegna was thus provided with the opportunity to advance his arguments against a finding of personal liability, and in the Finding and Award of June 2, 2015, the trial commissioner made note of those arguments, stating "[t]he respondent filed his brief on April 30, 2015. Most of his brief was taken up with his argument that he had not been a properly noticed party to the original formal hearing and that he had been misled into thinking he was not individually liable." Findings, ¶ 63.

Having reviewed the entire evidentiary record in this matter, and bearing in mind the fact that the trial commissioner granted Gramegna's Motion to Vacate to afford him the opportunity to advance his arguments against a finding of personal liability, we find no basis for the respondent's claim that the trier's findings in this matter constituted a deprivation of due process. We recognize that the findings have imposed upon the

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of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter…."

[15] We are similarly unconvinced that the claimant's right to due process was violated because the hearing notices which issued in this matter failed to specifically name him as a respondent. Potential liability is neither assigned nor avoided on the basis of the caption assigned to a file by the Workers' Compensation Commission or the names of the parties cited on the hearing notice, and "[t]he fact that the case was captioned on the notices as "Victor Melendez, Jr. v. Fresh Start General Remodeling and Contracting, LLC" cannot be argued to be some kind of *de facto* bifurcation." March 18, 2015 Memorandum of Decision Re: Respondents' Motion to Open, § III.A.2.b., p. 7.

respondent a significant financial exposure. We are also cognizant that the record reasonably supports the inference that the respondent was "motivated by altruism" in providing the claimant with employment. June 2, 2015 Finding and Award, Conclusion, ¶ C. That being said, the claimant in this matter is also entitled to due process, and has been forced to endure a number of delays in the prosecution of his claim through no fault of his own. We therefore decline to inflict any additional delay upon the claimant at this juncture by reversing the trier's findings.

There is no error; the June 2, 2015 Finding and Award of David W. Schoolcraft, Commissioner acting for the Eighth District, is accordingly affirmed.

Commissioners Ernie R. Walker and Nancy E. Salerno concur in this opinion.