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**DECISION AND NOTICE OF DECISION  
DECISIÓN Y AVISO DE LA DECISIÓN TOMADA**

A.L.J. Case No. 013-35860  
IN THE MATTER OF:

Mailed and Filed:  
ER NO:48-41624

NOV 06 2014

HARRY'S NURSES REGISTRY IN  
8825 163RD ST  
JAMAICA NY 11432-4046

RAYMOND NARDO  
129 THRID ST  
MINEOLA NY 11501

NYS DOL UI SPECIAL AUDIT  
ATTN: S.STEURENTHAL  
75 BROAD ST RM 1601  
NEW YORK NY 10004-

Department of Labor Office: LND  
A.S.O.-NYC-ATT: R. USMANI

Hearing Requested: October 04, 2013

**PLEASE TAKE NOTICE** that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within **TWENTY DAYS** from the date this decision was mailed. **READ IMPORTANT INFORMATION ON REVERSE SIDE REGARDING YOUR RIGHT TO APPEAL.** Any party who failed to appear at the hearing has the right to apply to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear.

**POR FAVOR TOME NOTA:** esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, puede apelar dentro de **VEINTE DIAS** contados a partir de la fecha en que esta decisión fue enviada por correo. **LEA LA INFORMACIÓN IMPORTANTE AL REVERSO SOBRE SUS DERECHOS DE APELACIÓN.** Cualquiera de las partes que falle en comparecer a la audiencia, tiene el derecho de solicitar que se reabra su caso. Para que dicha solicitud sea otorgada, la parte interesada debe solicitarlo dentro de un periodo de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia.

DOCUMENTO IMPORTANTE. PUEDE OBTENER UNA TRADUCCIÓN DEL MISMO LLAMANDO AL 1-888-209-8124 (FUERA DEL ESTADO DE NUEVA YORK 1-877-358-5306)

ISSUES: Employer's Application to Reopen Case No. 013-07916,  
Amount of contributions due under the Unemployment Insurance Law.

The Department of Labor issued the initial determination, dated September 14, 2012, assessing HARRY'S NURSES REGISTRY (hereinafter referred to as the "agency") \$273,230.12 (not reflecting accruing

interest charges) in additional contributions due for the period beginning with the first quarter of 2008 through the fourth quarter of 2010, based on remuneration paid to the individuals included in the audit as employees. The employer requested a hearing and objected contending that the individuals included in the audit were independent contractors.

The Employer has applied to reopen A.L.J. Case No. 013-07916. In that case, the Administrative Law Judge sustained the initial determination based upon the employer's failure to appear at a hearing on June 10, 2013.

Hearings were held at which testimony was taken. There were appearances on behalf of the employer and the Commissioner of Labor.

**FINDINGS OF FACT:** The agency is an employment agency providing primarily nurses and licensed practical nurses to hospitals, nursing homes and private individuals. The agency places advertisements in newspapers soliciting interest from nurses and licensed practical nurses. Once the agency has established the qualifications of such individuals responding to the advertisements, those individuals are then registered with the agency. When a hospital, nursing home, or private individual requests for example a nurse from the agency, the agency provides a list to the hospital of likely candidates and the hospital can then choose who to retain from the list. The agency then negotiates a fee for the chosen candidate. The individual then is paid through the agency. The agency provides no supervision to those from the list placed at hospitals, nursing homes or with private individuals. Supervision can be or is provided by the facilities or individuals those from the list are placed with. Those on the list provide their own transportation and supplies and are not reimbursed by the agency for any expenses. The agency provides no training or instruction. Those registered with the agency can work with other agencies at the same time as they are working with the agency herein.

Sometime at or about 1999, the Department of Labor issued a determination assessing a contribution charge of \$22,585.33 against the agency. That assessment was based on payments made by the agency to nurses registered with it for the period from 1993 to 1995. The employer objected to that assessment and requested a hearing. Hearings were held and in a decision issued on June 9, 1999 (ALJ Case No. 099-03418), the assessment was overruled. No appeal was taken from the decision issued.

The agency continues to operate essentially in the same way as it did when the above noted decision was issued.

Regarding the instant additional contributions due for 2008 to 2010, the Department of Labor based its assessment on its audit report indicating a list of persons paid by the agency and listed as nurses; based upon the Department's determination that the agency was operating as a home health care service - the agency's website discusses only home health care, i.e. Harry's Home Care, etc.; based upon the agency having a home health care license and having had such license since 1992; and based upon the Department having conducted a survey of persons who performed services for the agency in which all respondents indicated that they provided their services as home health care.

The Department of Labor representative cited three determinations - all three have not been appealed from or hearings requested. Those determinations found that three individuals - a nurse, a home aide, and a licensed practical nurse were employed by the agency. The determinations noted that the earnings of each and all other persons similarly employed required contributions or additional assessments from the first quarter of 2008.

The employer did not appear for the hearing scheduled on June 10, 2013 because its counsel required additional time to prepare its case.

**OPINION:** On application duly made, an Administrative Law Judge may reopen a case where a decision was made upon or following the default of a party if such party shows good cause for the default. (See, Appeal