

Donovan v. dial america marketing, inc.

[Business](#), [Marketing](#)



The researcher would travel to Dalliance's office in Tenneco and pick up cards, which contained the name and address of a subscriber whose telephone number was needed. They would write the numbers on the cards in a specified manner, and then return the completed cards to Dialectic's office. After properly completing the magazine expire cards, and the researcher were asked to sign a document labeled an " Independent contractor's Agreement. Upon signing the agreement to do home-research work, a worker was given a box of 500 cards to be researched. The worker was expected to set up an appointment to return the cards en week later.

Dialectic did not; require the home researchers to keep records of the hours that they worked. During the course of this program, six or seven of the home researchers acted as distributors for Dialectic, picking up and delivering the cards of other home researchers. In some cases, the distributors recruited new distributes and instructed them as to the proper method of completing the cards. Originally, Delmarva Instructed the distributors to require each of their researchers to sign the same independent contractor's agreement that was given to he other home researchers and retained copies of these signed agreements.

Dialectic paid its home researchers five cents for every completed telephone- number card. At the same time, Delmarva was paying Its In-house researchers the minimum-wage hourly rate. The piece rate paid to home researchers was eventually raised to seven cents and then to ten cents per card. Usually, one week after a home researcher had returned a group of cards; Dialectic would make payment to that researcher of a check

equal to the piece rate times the number of cards completed. They made no deductions from these checks.

Distributors were paid a lump sum equivalent to one cent more than the going piece rate for every completed card they returned to Dialectic, regardless of whether the card had been completed by them or their distributes, Initially, Delmarva Instructed the distributors to pay distributes the going piece rate and to keep the remaining one cent per card for themselves. Later, however, Dialectic gave no instructions as to the amount to be paid to distributes, allowing the distributors to negotiate their own piece rates. II. PROCEDURAL HISTORY

The Secretary of Labor filed the complaint In this action In the united States Toddlers Court for the District of New Jersey on December 30, 1981. Alleging that Dialectic was willfully compensating the home researchers and distributors at a rate below the I OFF willfully failed to keep adequate records of its employees' wages, hours, and other conditions of employment, in violation of 29 U. S. C. 211, 21 5(a)(5). The Secretary requires Dialectic from additional violation of the ELSE. By asking for the appropriate relief, including the payment of wages found to be due and owing.

Dialectic denied the Secretary's allegations, contending that its home researchers and distributors were not " employees" under the FALLS . III. Issue s 1) First, the court would determine whether the workers in question were " employees" under the ELSE. 2) Second, if they were held to be " employees," the court would then consider whether they were entitled to back pay or other relief. Any action on the second part of the case was to be

suspended until the first part was completed. See *Donovan v. Dialectic*, Civil No. 81-4020 (D. N. J. , June 4, 1982) (pre-trial order, part VI). The extent to which home researchers and distributors were dependent on Dialectic; the extent to which they had an opportunity for profit or loss; the extent to which they exercised initiative, business judgment, or foresight in their activities; the extent of any financial investment in conjunction with their work for Dialectic; and the extent to which the services provided by the home researchers and distributors were an integral part of Dialectic's business. 'V. Rule The court's letter opinion of January 26, 1984, includes some statements that are most accurately characterized as findings of fact.