

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, THIRD DEPARTMENT**

**Matter of Kriplin (Community Newspaper Group LLC--
Commissioner of Labor)**

2019 NY Slip Op 05238 (App. Div. 2019) · No. 525920 · Decided June 27, 2019

SUMMARY

The Appellate Division, Third Department affirmed Unemployment Insurance Appeal Board decisions finding that Community First Holdings, Inc. employed Jonathan Kriplin and similarly situated newspaper carriers. The court held that substantial evidence supported the Board's determination that the publisher exercised sufficient control over the carriers' work, and rejected arguments concerning independent-contractor status, Department of Labor guidelines, and First Amendment rights.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Aarons, J.; Garry, P.J.; Lynch, J.; Clark, J.; Devine, J.
JURISDICTION	New York
DECIDED	June 27, 2019
DOCKET	525920
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appeals from two decisions of the Unemployment Insurance Appeal Board holding that it was liable for unemployment insurance contributions based on remuneration paid to claimant and similarly situated newspaper carriers.
STANDARD OF REVIEW	Whether an employment relationship exists under the unemployment insurance law is a factual question. The Board's determination is conclusive if supported by substantial evidence on the record as a whole, even when the record contains evidence supporting a contrary conclusion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Community Newspaper Group LLC, now known as Community First Holdings, Inc., doing business as Press-Republican v. Jonathan

TOPICS

unemployment benefits administrative law judicial review of agency action standard of review
appellate procedure

PRACTICE AREAS

employment law administrative law unemployment benefits

QUESTIONS PRESENTED

1. Whether substantial evidence supported the Unemployment Insurance Appeal Board's determination that Kriplin was an employee of CFHI for purposes of the unemployment insurance law.
2. Whether the distribution agreements and the circumstances of the newspaper delivery work established sufficient employer control over the means or results of the work to support an employment relationship.
3. Whether Department of Labor guidelines or CFHI's asserted First Amendment rights required a different result.

HOLDINGS

1. The Board's determination that Kriplin was an employee of CFHI was supported by substantial evidence and was therefore beyond further judicial review.
2. Evidence of factors that could support independent-contractor status did not require reversal because substantial evidence supported the Board's contrary finding.
3. The Board's finding that an employment relationship existed did not impede or infringe CFHI's First Amendment rights.

KEY QUOTATIONS

“Whether an employment relationship exists within the meaning of the unemployment insurance law is a question of fact, no one factor is determinative and the determination of the appeal board, if supported by substantial evidence on the record as a whole, is beyond further judicial review even though there is evidence in the record that would have supported a contrary conclusion” ([*2])

“The pertinent inquiry is whether the purported employer exercised control over the results produced or the means used to achieve those results . . . with the latter being more important” ([*2])

FACTUAL BACKGROUND

Community First Holdings, Inc. published the Press-Republican and retained Jonathan Kriplin under distribution agreements to deliver newspapers to customers in specified geographic areas for a set price. The agreements imposed conditions and requirements, including established delivery deadlines. After Kriplin stopped making deliveries, the Department of Labor determined that he was an employee rather than an independent contractor

and assessed CFHI for additional unemployment insurance contributions attributable to him and similarly situated carriers.

PROCEDURAL HISTORY

After claimant stopped delivering newspapers and applied for unemployment benefits, the Department of Labor issued initial determinations finding that he was an employee of CFHI and that CFHI owed additional unemployment insurance contributions. Following hearings, an Administrative Law Judge upheld the determinations in two combined decisions, and the Unemployment Insurance Appeal Board affirmed. CFHI appealed to the Appellate Division, which affirmed the Board's decisions.

DISPOSITION

affirmed

CASES CITED

- Matter of Fecca [Herald Publ. Co.-Commissioner of Labor], 171 AD3d 1423, 1424, 1426 [2019]
- Matter of Alemic [Herald Publ. Co.-Commissioner of Labor], 140 AD3d 1565, 1566 [2016]
- Matter of Rosenfelder [Community First Holdings, Inc.-Commissioner of Labor], 137 AD3d 1438, 1439-1440 [2016]
- Matter of Lucas [Community First Holdings, Inc.-Commissioner of Labor], 170 AD3d 1384, 1385 [2019]

OPINION

PER CURIAM.

Matter of Kriplin (Community Newspaper Group LLC--Commissioner of Labor) (2019 NY Slip Op 05238) Matter of Kriplin (Community Newspaper Group LLC--Commissioner of Labor) 2019 NY Slip Op 05238 Decided on June 27, 2019 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: June 27, 2019 525920 [*1]In the Matter of the Claim of JONATHAN KRIPLIN, Respondent. COMMUNITY NEWSPAPER GROUP LLC, Now Known as COMMUNITY FIRST HOLDINGS, INC., Doing Business as PRESS- REPUBLICAN, Appellant. COMMISSIONER OF LABOR, Respondent. Calendar Date: June 3, 2019 Before: Garry, P.J., Lynch, Clark, Devine and Aarons, JJ. Bond, Schoeneck & King, PLLC, Syracuse (L.

Michael Zinser of The Zinser Law Firm, PC, Nashville, Tennessee, admitted pro hac vice), for appellant. Amanda FiggsGanter, Albany, for Jonathan Kriplin, respondent. MEMORANDUM AND ORDER Aarons, J. Appeals from two decisions of the Unemployment Insurance Appeal Board, filed October 30, 2017, which ruled, among other things, that Community First Holdings,

Inc. was liable for unemployment insurance contributions on remuneration paid to claimant and others similarly situated.

Community Newspaper Group LLC, now known as Community First Holdings, Inc. (hereinafter CFHI), is in the business of publishing a daily newspaper known as the Press-Republican. After a screening interview in 2013 with CFHI's manager, claimant signed distribution agreements wherein he agreed to deliver newspapers to CFHI's customers in two specified geographic areas for a set price, subject to certain conditions and requirements, including established delivery deadlines.

After claimant stopped making deliveries, he applied for unemployment insurance benefits. The Department of Labor issued initial determinations finding that claimant was an employee of CFHI and that CFHI was liable for additional unemployment insurance contributions based upon remuneration paid to him and other similarly situated newspaper carriers. CFHI objected and, following hearings, an Administrative Law Judge upheld the initial determinations in two combined decisions.

The Unemployment Insurance Appeal Board agreed. These appeals by CFHI ensued. We affirm. "Whether an employment relationship exists within the meaning of the unemployment insurance law is a question of fact, no one factor is determinative and the [*2]determination of the appeal board, if supported by substantial evidence on the record as a whole, is beyond further judicial review even though there is evidence in the record that would have supported a contrary conclusion" (Matter of Fecca [Herald Publ.

Co.-Commissioner of Labor], 171 AD3d 1423, 1424 [2019] [internal quotation marks and citations omitted]; see Matter of Alemic [Herald Publ. Co.-Commissioner of Labor], 140 AD3d 1565, 1566 [2016]). "The pertinent inquiry is whether the purported employer exercised control over the results produced or the means used to achieve those results... with the latter being more important" (Matter of Rosenfelder [Community First Holdings, Inc.-Commissioner of Labor], 137 AD3d 1438, 1439 [2016] [internal quotation marks and citations omitted]).

This Court has recently affirmed decisions of the Board finding that an employment relationship existed between newspaper publishers, including CFHI, and comparable newspaper delivery workers (see Matter of Lucas [Community First Holdings, Inc.-Commissioner of Labor], 170 AD3d 1384, 1385 [2019]; Matter of Rosenfelder [Community First Holdings, Inc.-Commissioner of Labor], 137 AD3d at 1439-1440).

The provisions of the distribution contracts governing claimant and other newspaper carriers retained by CFHI are substantively equivalent, and the indicators of control relied upon by the Board with regard to claimant are essentially indistinguishable from the relevant factors identified and relied upon in the prior cases to find an employment relationship (see id.).

Contrary to CFHI's arguments, we find no errors of fact or law that undermine the Board's decisions and are unpersuaded that the Department of Labor guidelines were not properly considered or "mandate a different result" (Matter of Alemic [Herald Publ. Co.-Commissioner of Labor], 140 AD3d at 1566; see Matter of Fecca [Herald Publ. Co.-Commissioner of Labor], 171 AD3d at 1426; Matter of Lucas [Community First Holdings, Inc.-Commissioner of Labor], 170 AD3d at 1385; Matter of Rosenfelder [Community First Holdings, Inc.-Commissioner of Labor], 137 AD3d at 1440).

Although CFHI points out numerous factors that would support a finding that claimant was an independent contractor, we find, consistent with our holdings in similar appeals, that the record contains substantial evidence to support the Board's finding of an employment relationship, precluding further judicial review (see Matter of Fecca [Herald Publ. Co.-Commissioner of Labor], 171 AD3d at 1426).

Moreover, "we fail to discern how the Board's finding of an employment relationship here impedes or otherwise infringes upon [CFHI's] First Amendment rights" (id.). CFHI's remaining contentions have been reviewed and found to lack merit.[FN1] Garry, P.J., Lynch, Clark and Devine, JJ., concur. ORDERED that the decisions are affirmed, without costs. Footnotes Footnote 1: As the Board noted, the amendment to Labor Law § 511 (23) (as added by L 2016, ch 503, § 1 [Nov.

28, 2016]) is not applicable to this claim, which preceded that legislative change.