



**Pennsauken Diagnostic Center, LLC,**  
Petitioner,

**STATE OF NEW JERSEY  
DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT**

v.

**New Jersey Department of Labor  
and Workforce Development,**  
Respondent.

**FINAL ADMINISTRATIVE ACTION  
OF THE  
COMMISSIONER**

**OAL DKT. NO LID 00243-21  
AGENCY DKT. NO. DOL 20-022**

Issued: March 16, 2023

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The appeal of Pennsauken Diagnostic Center, LLC (petitioner or PDC), a provider of radiology services with two New Jersey locations, concerning an unemployment and temporary disability assessment of the New Jersey Department of Labor and Workforce Development (respondent or Department) was heard by Administrative Law (ALJ) Judge Susan Olgiati. In her initial decision, the ALJ concluded that PDC had failed to present sufficient proofs to establish that the individuals whose services were the basis for the Department's assessment – Drs. Sheppard, Caldwell, Stebbins and Taflet (radiologists); unnamed “cleaners and drivers,” whose status as employees is not in dispute; and Shazeen Ali, who managed the Pennsauken location of PDC – were genuine independent contractors exempt from coverage under the New Jersey Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq., applying the test for independent contractor status set forth at N.J.S.A. 43:21-19(i)(6)(A), (B) and (C), commonly referred to as the “ABC test.” However, regarding Shazeen Ali, the ALJ concluded that because during the audit period Ms. Ali was an owner/member of PDC, rather than an employee of PDC, she was exempt from UCL coverage. Therefore, the ALJ upheld the amounts assessed by the Department against PDC for unpaid contributions to the unemployment compensation fund and State disability benefits fund on behalf of the radiologists, cleaners and drivers. However, the ALJ ordered the

reversal of the Department's assessment against PDC for unpaid contributions on behalf of Shazeen Ali.

Regarding the services provided to PDC during the audit period by the above-listed individuals, the issue to be decided is whether those individuals were employees of petitioner and, therefore, whether petitioner was responsible under N.J.S.A. 43:21-7 for making contributions to the unemployment compensation fund and the State disability benefits fund with respect to those individuals during the audit period.

Under the UCL (N.J.S.A. 43:21-1 et seq.), the term "employment" is defined broadly to include any service performed for remuneration or under any contract of hire, written or oral, express or implied. N.J.S.A. 43:21-19(1)(A). Once it is established that a service has been performed for remuneration, that service is deemed to be employment subject to the UCL, unless and until it is shown to the satisfaction of the Department either that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

N.J.S.A. 43:21-19(i)(6).

The above statutory criteria are written in the conjunctive. Therefore, where a putative employer fails to meet any one of the three criteria listed above with regard to an individual who has performed a service for remuneration, that individual is considered to be an employee and the service performed is considered to be employment subject to the requirements of the UCL; in particular, subject to N.J.S.A. 43:21-7, which requires an employer to make contributions to the unemployment compensation fund and the State disability benefits fund with respect to its employees.

Relative to Prong "A" of the ABC test, the ALJ concluded that the radiologists who had provided services to PDC during the audit period were subject to control or direction by PDC in the performance of their duties. In support of this conclusion, the ALJ listed the following findings of fact:

(1) The overall relationship that led to the work of the radiologists and the key terms and conditions of the work were set by PDC;

- (2) PDC controlled the workflow;
- (3) Once PDC performed the diagnostic imaging of its patients, the radiologists were required to log into PDC's portal to determine which images they should read;
- (4) PDC required that the radiologists' reports be prepared within 24 hours;
- (5) PDC paid the radiologists a set rate pursuant to its agreement with Personal Touch Radiology, LLC;<sup>1</sup>
- (6) PDC, not Personal Touch Radiology, LLC, and not the individual radiologists, billed its patients or third parties (e.g., insurance companies) for the services performed, including the readings that were performed by the radiologists; and
- (7) PDC bore the risk of loss for the services performed for its diagnostic-imaging patients, including for the services performed by the radiologists.

Relative to Prong "B" of the ABC test, the ALJ concluded that the services performed by the radiologists had been performed both in the usual course of PDC's business and among PDC's places of business. Specifically, the ALJ stated the following:

With respect to Prong "B," ...PDC requires the professional services of the radiologists to read and interpret its diagnostic imaging. Thus, the work of the radiologists is a necessary and integral part of the work of PDC. Additionally, while the radiologists are able to work from outside of PDC's offices, they must log into PDC's portal to access the imaging they choose to read. Thus, it is PDC's portal, rather than its physical plant, that is integral to the services that the radiologists perform for PDC and its clients. Accordingly, the portal and the remote locations from which the radiologists access same can reasonably be considered an extension of the PDC workplace. Finally, the evidence in the record demonstrates that Dr. Sheppard in her role as PDC's medical director occasionally visited its offices, and that Dr. Stebbins conducted his reads from the Hamilton office of PDC.

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<sup>1</sup> Dr. Sheppard maintained her own radiology medical practice, called Personal Touch Radiology, LLC, t/a Pink Breast Center. According to the ALJ, "Dr. Sheppard performed services as an individual radiologist/medical Director for PDC by logging into its portal, conducting readings, and connecting PDC with other physicians." The invoices for Dr. Sheppard and the other radiologists were issued by Personal Touch Radiology to PDC, but the payments were made directly by PDC to each radiologist.

Relative to Prong “C” of the ABC test, the ALJ concluded with regard to the radiologists that notwithstanding the existence of Personal Touch Radiology, LLC, a radiology medical practice of which Dr. Sheppard is the sole member, petitioner had failed to meet its burden of establishing that the radiologists were customarily engaged in an independently established trade, occupation, profession or business. That is, the ALJ found that the testimony of Brett Boal, Dr. Sheppard’s husband, who performs non-clinical management of Personal Touch Radiology, LLC, and the “limited documentary evidence in the record,” were insufficient to meet petitioner’s burden in that the evidence failed to demonstrate that the radiologists could maintain a business independent of and apart from their work with PDC; that PDC had failed to establish that the radiologists had businesses that were stable and lasting.

Regarding the cleaners and drivers, since petitioner did not dispute the Department’s assertion that PDC had failed to meet its burden under the ABC test, the ALJ concluded that the Department’s determination as to the cleaners and drivers should be affirmed.

Finally, as to Shazeen Ali, who managed the Pennsauken location of PDC, the ALJ concluded that because she was an owner/member of PDC, rather than an employee of PDC, the services she performed for PDC during the audit period were exempt from UCL coverage. As to the basis for the ALJ’s conclusion that Shazeen Ali had been an owner/member of PDC, rather than an employee of PDC, the ALJ explained as follows:

The primary, if not exclusive, basis for the [Department’s] determination that Shazeen Ali is an employee of PDC and subject to the UCL is the 2015 tax return, which reflects that Nazish Khan and Faisal Ali are each 50 percent owners of PDC, and therefore includes no reference to Shazeen [Ali] as owner. This tax return was provided to the [Department] by Nazish Khan, who at the time was involved in litigation with [Shazeen Ali] regarding, among other things, the ownership of PDC.<sup>2</sup> Nazish [Kahn] and Faisal [Ali] testified that the 2015 tax return was never filed. Their testimony was supported by the testimony of Greg Gallo, CPA, who

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<sup>2</sup> The ALJ’s initial decision also contains the following relevant findings. Shazeen Ali is married to Faisal Ali and is the sister of Nazish Khan. Shazeen Ali was one of the original owners of PDC. The lawsuit between sisters Shazeen Ali and Nazish Khan was filed in 2016. One of the main issues in the lawsuit was ownership of PDC. In the lawsuit, Nazish Khan claimed that she and Faisal Ali were 50 percent owners of PDC and that Shazeen Ali was not an owner. The 2015 tax return was prepared by Mohammad Khan, a friend of Nazish Khan. In 2016, Mohammad Khan was removed by the court as the accountant for PDC. The lawsuit ended in 2019 or 2021. Nazish Khan is no longer an owner of PDC. She is running her own business.

saw only a draft of the 2015 return that was marked “under extension.”<sup>3</sup> Moreover, their testimony is further supported by the September 2016 email from Khan Associates, the former bookkeeping firm for PDC and a named defendant in the civil litigation with PDC and Nazish [Khan], advising Faisal [Ali] that the 2015 tax return for PDC was not filed but that the IRS had copies.

PDC’s position that Shazeen [Ali] was and remains an owner/member of PDC is further supported by the PDC tax returns filed in 2012-2014 and by the Annual Reports filed by PDC with the State of New Jersey for years 2017, 2018 and 2019. Thus, I CONCLUDE that there is no competent evidence in the record that the 2015 tax return was ever in fact filed.

...

Accordingly, I further CONCLUDE that the evidence demonstrates that Shazeen Ali was an owner/member of PDC during the audit period.

Based on the foregoing, the ALJ affirmed the Department’s assessment for unpaid contributions to the unemployment compensation fund and State disability benefits fund; however, reduced the total assessment by the amount assessed against PDC for services performed by Shazeen Ali. Exceptions were filed by both petitioner and respondent. Petitioner also filed a reply to respondent’s exceptions.

In its exceptions, petitioner disagrees with the ALJ’s conclusion that the radiologists engaged by PDC during the audit period were employees. Specifically, petitioner maintains that PDC did not have a direct relationship with any of the radiologists and that, instead, PDC had a contract with another entity – Personal Touch Radiology, LLC., adding:

The ALJ overlooked the fact that PDC did not set any terms or conditions or control any workflow for any specific radiologist. Unlike [in Jersey Shore Reporting, 2021 N.J. AGEN LEXIS 483, and State Shorthand Reporting, 2021 N.J. AGEN LEXIS 482, both cited by the ALJ in her initial decision], PDC did not have direct contact with the radiologists directly. Rather, PDC dealt only with Personal Touch Radiology which distributed cases to the radiologists based upon its own internal

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<sup>3</sup> Included in the ALJ’s initial decision were the following findings relative to Greg Gallo. He testified that in 2016 he was appointed by the Superior Court as a bookkeeper for PDC. According to Mr. Gallo, at the time of his appointment he understood that Shazeen Ali was a partner. As PDC’s bookkeeper, he recorded payments to Shazeen Ali as “owner draw.” Mr. Gallo also testified that he on behalf of PDC had forwarded a request to the Internal Revenue Services for a transcript of any tax filings for the year 2015, but he had received no response.

procedures. Not only did PDC not control the process of selection of specific radiologists, it had no input whatsoever in the selection of specific radiologists.

PDC did not require any specific radiologist to prepare any report within 24 hours; and PDC did not pay any radiologists a set rate. Rather, PDC required Personal Touch Radiology to turn around a report within a specified time and Personal Touch Radiology billed PDC for the services which it performed. A term in a contract requiring performance within a set period of time is no more suggestive of an employment relationship, than an independent contractor relationship. Almost all contracts, home improvement, or otherwise, include provisions requiring performance within a set period of time. This is not “control.” It is a mutually agreed upon contractual term between two businesses.

Contrary to the conclusion of the ALJ, PDC did not bill its patients or third parties for the services performed by any specific radiologist. PDC billed its patients or third parties for performing radiology services irrespective of any amount which it paid to Personal Touch Radiology, LLC.

The evidence submitted clearly indicated that Dr. Sheppard had a number of independently established businesses and only derived a tiny part of her income from PDC. It was shown that Dr. Traflet owned a business with three locations in North Jersey.

The ALJ’s observation that Dr. Sheppard “occasionally visited PDC’s offices” is irrelevant. None of the remuneration paid to Dr. Sheppard was for performing her role as medical director; all of the funds paid by PDC to Dr. Sheppard involved readings.

Finally, there is no precedent or legal support for the [ALJ’s] extension of the place of business into cyberspace.

In respondent’s exceptions, it states that it agrees with the ALJ’s findings and conclusions as to the radiologists, drivers and cleaners. However, respondent disagrees with the ALJ’s conclusion that Shazeen Ali was a part owner of PDC, and was therefore, not an employee of PDC. Specifically, respondent takes issue with the ALJ’s reliance on her own assessment of the credibility of the witnesses who testified before her regarding the employment status of Ms. Ali, arguing that the ALJ should, instead, have relied primarily, if not exclusively, on the unfiled 2015 tax return that was provided to the Department’s auditor by Nazish Khan during the course of the Department’s audit of PDC. Respondent also stated the following:

During the audit and testimony, it was disclosed that the 2015 federal tax return may not have been filed. Without receipt from the entity

of an IRS transcript the auditor was required to use the information as presented during the audit. The auditor could not alter his audit findings based on the non-response of the IRS or simply upon the undocumented testimony of the partners.

In petitioner's reply to the exceptions that were submitted by respondent, it states the following:

(1) It is respectfully submitted that the ALJ properly relied upon the testimony of Greg Gallo, the court appointed accountant for PDC. The sole piece of evidence relied upon by the auditor to show that Shazeen Ali was not an owner of PDC in 2015 was an unapproved, unfiled, self-serving draft tax return given to the auditor by Nazish Khan, a litigation adversary in the midst of an ongoing dispute. Importantly, neither Nazish Khan, the prior owner with whom Mr. and Mrs. Ali were litigating regarding the parties' ownership of PDC, nor Mohammad Khan, the accountant who prepared the unfiled 2015 tax return relied upon by the Department to assert Shazeen was not an owner at that time, appeared to testify on behalf of the Department. On the contrary, Mr. Gallo did appear and provide credible testimony with regard to his first hand knowledge of PDC's ownership, and the fact that the purported 2015 tax return presented by Nazish Khan had never been filed.

...

(2) The evidence supporting the fact that Shazeen Ali was an initial member of PDC and has always remained a member of PDC was compelling, and not contradicted by any credible evidence. In fact, the main document upon which the Department seeks to rely in demonstrating that Shazeen was an employee is a purported tax return provided by a prior owner with whom the Ali's were engaged in protracted litigation over PDC's ownership who had a direct motive and interest in exaggerating her ownership and minimizing Shazeen's

The documentation providing Shazeen Ali's membership status includes the following:

- Certificate of Formation of PDC (P1)
- General Ledger of PDC for 2017 (Owner draw entries summaries on pg. 70) (P2)
- General Ledger of PDC for 2018 (Owner draw entries summarized on pg. 87) (P3)
- 2012 Tax Return (P4)
- 2013 Tax Return (P5)
- 2014 Tax Return (P6)
- Annual Report for the year 2017 (P7)

- Annual Report for the years 2018-2019 (P12)

In addition to the provision of the above captioned documentary evidence, Shazeen Ali credibly testified that she is on of the initial owners of PDC and has always been an owner; she was involved in a lawsuit with Nazish Khan filed in July 2016 where one of the issues was the ownership of PDC; the purported 2015 tax return provided by Nazish Khan was an unfiled draft prepared by Hazish Khan's friend, Mohammed Khan; and that the New Jersey Superior Court entered an Order in 2016 enjoining the parties to that litigation from making statements to third parties with respect to the ownership of PDC. At all times during his testimony, which the [ALJ] found credible, Shazeen Ali's husband and co-owner of PDC testified consistent with the above, including that Shazeen has always been an owner of PDC since its formation.

Finally, the court appointed bookkeeper, Greg Gallo, CPA, testified that he understood Shazeen to be an owner at the time of his appointment and that he recorded payments to Shazeen Ali the same way he recorded those to Nazish Khan. Mr. Gallo testified further that neither Nazish Khan, nor her attorneys (both of whom had daily access to PDC's records) ever objected to his [Mr. Gallo's] classification of payments to Shazeen Ali as an "owners draw."

### CONCLUSION

Upon *de novo* review of the record, and after consideration of the ALJ's initial decision, as well as the exceptions filed by both petitioner and respondent, and petitioner's reply to the exceptions filed by respondent, I hereby accept the ALJ's recommended order affirming the Department's assessment against PDC for unpaid contributions to the unemployment compensation fund and State disability benefits fund on behalf of the radiologists, cleaners and drivers. I also hereby accept the ALJ's recommend order reversing the Department's assessment against PDC for unpaid contributions to the unemployment compensation fund and State disability benefits fund on behalf of Shazeen Ali.

Regarding Prong "A" of the ABC test, I agree with the ALJ's findings and conclusions that the radiologists who provided services to PDC during the audit period were subject to control or direction by PDC in the performance of their duties. That is, I agree with the ALJ's conclusion that the each of the following constitute indicia of direction or control by PDC over the radiologists:

- (1) The overall relationship that led to the work of the radiologists and the key terms and conditions of the work were set by PDC;
- (2) PDC controlled the workflow;



- (3) Once PDC performed the diagnostic imaging of its patients, the radiologists were required to log into PDC's portal to determine which images they should read;
- (4) PDC required that the radiologists' reports be prepared within 24 hours;
- (5) PDC paid the radiologists directly for the services they performed;
- (6) The radiologists rate of pay was set by PDC through its agreement with Personal Touch Radiology, LLC;
- (7) PDC, not Personal Touch Radiology, LLC, and not the individual radiologists, billed its patients or third parties (e.g., insurance companies) for the services performed, including the readings that were performed by the radiologists;
- (8) PDC bore the risk of loss for the services performed for its diagnostic-imaging patients, including for the services performed by the radiologists.

I need not address either Prong "B" or Prong "C" of the ABC test in this decision, because, as indicated earlier, the ABC test is written in the conjunctive and, therefore, PDC's failure to meet its burden of proving Prong "A" alone is sufficient to find that the radiologists are employees, rather than independent contractors. Nevertheless, I do feel compelled to express for the record that the testimony of Brett Boal, Dr. Sheppard's husband, who performs non-clinical management of Personal Touch Radiology, LLC, establishes that both Dr. Sheppard and Dr. Stebbins performed services at the physical locations of PDC. That is, when asked whether Dr. Sheppard ever went to the Pennsauken or Hamilton Township locations of PDC to do work, Mr. Boal responded, "She would...go there, particularly for review of the – primarily I would say for reviews of filings, either insurance companies or state filings or radiology. She is a supervisor of the clinical side, reviews the operation to make certain that the filing is accurate and reflects correctly the operation." Transcript, p. 121, line 24 through p. 122, line 7. As to Dr. Stebbins, Mr. Boal testified, "So, I don't know what percentage of time, but I know that he [Dr. Stebbins] would actually go to Hamilton [that is, the Hamilton Township location of PDC] and read there." Transcript, p. 125, line 21 through line 23. Regarding Drs. Caldwell and Taflet, Boal testified that he did "not know the details" of where they performed their work for PDC. Transcript, p. 124, line 24. The only evidence in the record offered by PDC to support its assertion that the radiologists performed all of their work for PDC outside of the Pennsauken or Hamilton Township locations of PDC was the following exchange during the Office of Administrative Law hearing between counsel for PDC and PDC owner/member Shazeen Ali: Q: "Did they [the radiologists] come to the office?" A: "No." Transcript, p. 151, line 14. Aside from the self-serving nature of this exchange, it is not clear to me from the question posed and Ms. Ali's response, whether she meant that the radiologists did not come to the office, generally, or that they never came to the office. In any event, with Mr. Boal's testimony, and in the

absence of first-hand testimony from any of the radiologists themselves, I must conclude that petitioner has failed to meet its burden of establishing that the radiologists worked outside of all of PDC's places of business.<sup>4</sup> As to whether petitioner has established that the services performed by the radiologists were outside of PDC's ordinary course of business, I agree with the ALJ that the services performed by the radiologists were performed within, not without, PDC's usual course of business; which is to say, I agree with the ALJ that in order for PDC to conduct its business, it requires the professional services of the radiologists to read and interpret its diagnostic imaging and, therefore, the work of the radiologists is a necessary and integral part of the work of PDC. Thus, petitioner has failed to demonstrate by a preponderance of evidence, as is its burden under the ABC test, that the radiologists performed services either outside of petitioner's usual course of business or outside of all petitioner's places of business.

Regarding Prong "C" of the ABC test, as reflected in the opinions in both Carpet Remnant, supra., and Gilchrist v. Division of Employment Sec., 48 N.J. Super. 147 (App. Div. 1957)., the requirement that a person be customarily engaged in an independently established trade, occupation, profession or business calls for an "enterprise" or "business" that exists and can continue to exist independently of and apart from the particular service relationship. Furthermore, in order to satisfy Prong "C" of the ABC test, PDC must demonstrate that *each* of the individuals in question who performed services for PDC during the audit period was engaged in a viable, independently established, business at the time that he or she rendered services to PDC. See Gilchrist, supra., and Schomp v. Fuller Brush Co., 124 N.J.L. 487 (Sup. Ct. 1940).

In Carpet Remnant, supra., which concerned the work of carpet installers, the Court remanded the matter to the Department with the following direction as to how one should undertake the Prong "C" analysis:

That determination [whether Prong "C" has been satisfied] should take into account various factors relating to the installers ability to maintain an independent business or trade, including the duration and strength of the installers' business, the number of customers and their respective volume of business, the number of employees, and the extent of the installers' tools, equipment, vehicles, and similar resources. The Department should also consider the amount of remuneration each installer received from CRW [Carpet Remnant Warehouse, Inc.] compared to that received from other retailers.

Relative to the latter part of the Prong "C" analysis; that is, consideration of the amount of remuneration each individual received from the putative employer compared to that received from others, the holding in Spar Marketing, Inc. v. New Jersey

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<sup>4</sup> For the record, I disagree with the ALJ that use by the radiologists of PDC's portal to access the diagnostic images they were tasked by PDC with reading and interpreting transformed remote locations where the radiologists performed some of their work, including their homes, into extensions of PDC's workplace.

Department of Labor and Workforce Development, 2013 N.J. Super. Unpub. LEXIS 549 (App. Div. 2013), certification denied, 215 N.J. 487 (2013), is instructive. In that case, the services of retail merchandisers were at issue and the court observed:

No proof that the merchandisers worked simultaneously for other merchandising companies was provided; Brown's general claims to the contrary,<sup>5</sup> without documentary support, are not persuasive. As a result, petitioner failed to provide, by a preponderance of the credible evidence, proofs sufficient to satisfy subsection (C) of the ABC test.

Thus, in order to satisfy Prong "C" of the ABC test, PDC must prove by a preponderance of the credible evidence with regard to each of the individuals in question whose services it engaged during the audit period that the he or she was during the audit period customarily engaged in an independently established business or enterprise (not multiple employment). Under the holding in Carpet Remnant, supra., that means that relative to each of the individuals in question whose services PDC engaged during the audit period, it must address the duration and strength of each individual's business during that period, the number of customers and their respective volume of business during that period, the number of employees of the business or enterprise during that period, the extent of each individual's business resources during that period, and the amount of remuneration each individual received from PDC during that period compared to that received from others; which is to say, not a general claim that each individual worked for or was free to work for others, but actual evidence reflecting the amount of remuneration that each individual received from PDC compared to that received from others for performance of the same service.

As noted by the ALJ, Prong "C" of the ABC test, "broadly asks whether a worker can maintain a business independent of and apart from the employer." East Bay Drywall v. Dep't of Labor and Workforce Dev., 251 N.J. 477, 496-97 (citing Gilchrist, supra., at 158) (emphasis added). That business must be "stable and lasting." Gilchrist, supra., at 158. I agree with the ALJ that PDC has failed to demonstrate that the individual radiologists were engaged in businesses that could have continued to exist independently and apart from their relationship with PDC. Therefore, PDC has failed to meet its burden under Prong "C" of the ABC test.

Generally speaking, it strains credulity to believe that Drs. Sheppard, Caldwell, Stebbins and Taflit were all independent contractors, when Dr. Sheppard is the Medical Director for PDC's entire operation (a fact conceded by petitioner); when the business and medical purpose of PDC's operation is to see patients for the taking, reading and interpretation of diagnostic images; when Drs. Sheppard, Caldwell, Stebbins and Taflit are the radiologists who read and interpret diagnostic images for PDC; and when each of the radiologists is paid directly by PDC for the performance of these services that are

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<sup>5</sup> Brown was one of the merchandisers who had been engaged to perform services for Spar Marketing, Inc.

integral to PDC's business. Frankly, PDC's classification of these radiologists as independent contractors is precisely the type of "subterfuge" warned against by the Court in East Bay Drywall, supra.; the type of business practice "intended to obscure the employer's responsibility to remit its fund contributions as mandated by the State's employee protections statutes." Id., at 500-501.

Regarding the cleaners and drivers who performed services for PDC during the audit period, I agree with the ALJ that since petitioner does not dispute the Department's determination as to the employment status of these workers, the assessment against PDC for unpaid contributions on their behalf should be affirmed.

Finally, I agree with the ALJ that the Department's assessment against PDC for unpaid contributions on behalf of Shazeen Ali should be reversed; that is, I agree with the ALJ that the overwhelming weight of the evidence presented during the Office of Administrative Law hearing supports the conclusion that Shazeen Ali was an owner/member of PDC, rather than an employee.

### **ORDER**

Therefore, with regard to the services provided to PDC by the radiologists, drivers and cleaners, the Department's assessment against PDC for unpaid contributions to the unemployment compensation fund and State disability benefits fund for the audit period 2015 through 2018 is affirmed and petitioner's appeal is hereby dismissed. With regard to the services provided to PDC by Shazeen Ali, the Department's assessment against PDC for unpaid contributions to the unemployment compensation fund and State disability benefits fund for the audit period 2015 through 2018 is reversed and petitioner's appeal is hereby granted. Thus, it is ordered that PDC immediately remit to the Department for the audit period the total amount originally assessed against PDC - \$25,762.37 – minus the amount of the assessment that is attributable to the services performed for PDC by Shazeen Ali. Interest and penalties shall only be collected on the final adjusted assessment amount.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY  
THE COMMISSIONER, DEPARTMENT  
OF LABOR AND WORKFORCE DEVELOPMENT



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