

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: July 22, 2004

95026

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In the Matter of the Claim of  
ANJA LIMPERIS,  
Respondent.

AUFBAU TRUST,  
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,  
Respondent.

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Calendar Date: June 7, 2004

Before: Cardona, P.J., Mercure, Peters, Rose and Kane, JJ.

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Law Office of Kane Kessler P.C., New York City (Lois M. Traub of counsel), for appellant.

McNamee, Lochner, Titus & Williams P.C., Albany (Francis J. Smith of counsel), for Anja Limperis, respondent.

Eliot Spitzer, Attorney General, New York City (Steven Segall of counsel), for Commissioner of Labor, respondent.

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Appeals from two decisions of the Unemployment Insurance Appeal Board, filed March 19, 2003, which, inter alia, ruled that Aufbau Trust was liable for unemployment insurance contributions based on remuneration paid to claimant and others similarly situated.

Claimant worked as a graphic designer and Web master for Aufbau Trust and its predecessor, New World Club, Inc. She was expected to design Aufbau's newspaper for publication and maintain their Web site. Claimant had a desk at, and often

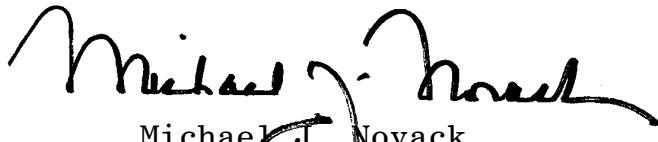
worked in, Aufbau's office, had two e-mail addresses through Aufbau, and was paid an hourly rate with overtime. Claimant was expected to attend staff meetings, including ones where the layout and advertising for the upcoming issue would be discussed, and was told what advertisements she would design and what graphics would be "required." When claimant completed a draft issue, the draft would be edited and approved by editorial staff, and changes had to be completed by claimant before the issue's deadline. Claimant testified that she did not advertise her services to other businesses while with Aufbau. Claimant was also expected to notify Aufbau if she was not able to come to work.

Under the circumstances of this case, substantial evidence supports the Unemployment Insurance Appeal Board's finding that there was sufficient direction and control over important aspects of the services performed by claimant to establish her status as Aufbau's employee, notwithstanding evidence in the record that could support a contrary conclusion (see Matter of Medical Transcription Plus [Commissioner of Labor], 302 AD2d 689, 689-690 [2003]; Matter of Magill Assoc. [Commissioner of Labor], 296 AD2d 670, 671 [2002]). We do not consider Aufbau's remaining contention, that claimant voluntarily left her employment, inasmuch as that issue was not considered at the administrative hearing (see Matter of Altman [Commissioner of Labor], 3 AD3d 658, 659 [2004]).

Cardona, P.J., Mercure, Peters, Rose and Kane, JJ., concur.

ORDERED that the decisions are affirmed, with costs to claimant.

ENTER:



Michael J. Novack  
Clerk of the Court

