

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

Decided and Entered: April 23, 2020

528630

In the Matter of the Claim of
XAVIER CASTRO,
Respondent.

PARK WEST EXECUTIVE SERVICES
INC.,
Appellant.

MEMORANDUM AND ORDER

COMMISSIONER OF LABOR,
Respondent.

Calendar Date: March 24, 2020

Before: Garry, P.J., Egan Jr., Lynch, Aarons and Reynolds
Fitzgerald, JJ.

Proskauer Rose LLP, New York City (Allan S. Bloom of
counsel), for appellant.

Amanda FiggsGanter, Albany, for Xavier Castro, respondent.

Lynch, J.

Appeals from two decisions of the Unemployment Insurance
Appeal Board, filed May 11, 2018, which ruled, among other
things, that Park West Executive Services Inc. was liable for
additional unemployment insurance contributions on remuneration
paid to claimant and others similarly situated.

Claimant contracted to be a driver with Park West
Executive Services Inc., a company that provides black car

limousine services to its clients, and he worked in that capacity for approximately five weeks. Claimant thereafter applied for unemployment insurance benefits. The Unemployment Insurance Appeal Board determined that claimant was an employee of Park West and that Park West was liable for contributions based on remuneration paid to claimant and others similarly situated. Park West appeals.

For the purposes of determining whether an employment relationship existed, the contract that Park West entered into with claimant is identical in all relevant respects to that examined in Matter of Escoffery (Park West Executive Servs., Inc.-Commissioner of Labor) (180 AD3d 1294 [2020]). For the reasons discussed in that decision, Park West did not retain a sufficient indicia of control over claimant to establish an employment relationship (see id.). Accordingly, substantial evidence does not support the Board's decisions and they must be reversed.

Garry, P.J., Egan Jr., Aarons and Reynolds Fitzgerald, JJ., concur.

ORDERED that the decisions are reversed, without costs, and matter remitted to the Unemployment Insurance Appeal Board for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court