



**Kismet Limousine, and
Emin Kahyaoglu,
President and Individually
Petitioners,**

**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 06632-22
AGENCY DKT. NO. GE-244-0217-SAN**

Issued: July 14, 2025

The New Jersey Department of Labor and Workforce Development (Department or respondent) served Kismet Limousine, and Emin Kahyaoglu, President and Individually (Kismet or petitioners), with notice that Kismet had violated N.J.S.A. 34:11-4.2, N.J.S.A. 34:11-4.4, N.J.S.A. 34:11-56a20, and N.J.A.C. 12:56-4.1. Specifically, the Department found that Kismet had failed to keep proper payroll records for the drivers employed by Kismet, that Kismet had failed to properly pay those employees, and that Kismet had taken illegal deductions from their wages. Based on these violations, the Department assessed Kismet for unpaid wages in the amount of \$290,316.81, an administrative fee in the amount of \$52,257.03, and penalties in the amount of \$25,500.00.

Petitioners requested a hearing. The matter was transmitted to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge (ALJ) William J. Courtney. The ALJ promptly placed the matter on the inactive list pending the outcome in Kismet Int'l, Inc. v. New Jersey Dep't of Labor & Workforce Dev., 2023 N.J. Super. Unpub. LEXIS 1323 (App. Div. Aug. 2, 2023), cert. denied, 2024 N.J. LEXIS 78 (N.J. January 23, 2024). In that case, the issue was whether the drivers whose services had been engaged by Kismet were employees of Kismet, rather than

independent contractors, and, therefore, whether Kismet was responsible under the New Jersey Unemployment Compensation Law; specifically, 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. The Appellate Division of the Superior Court (hereafter, “the Appellate Division”) ultimately affirmed the final administrative determination of the Commissioner that Kismet had misclassified its drivers as independent contractors, rather than as employees, and consequently, that Kismet was liable for unpaid contributions to the unemployment compensation and State disability benefits funds on behalf of the drivers it had employed. After the New Jersey Supreme Court declined to review the Appellate Division’s decision in Kismet Int’l, supra, the within matter was removed from the inactive list and scheduled for a hearing before the ALJ.

Prior to the hearing, respondent filed a motion before the ALJ for summary decision, pursuant to N.J.A.C. 1:1-12.5. Specifically, respondent maintained that summary decision was appropriate because Kismet’s liability for unpaid wages (and the related administrative fee and penalties) hinges on the question of whether Kismet’s drivers were independent contractors, as Kismet maintains, or employees, and in Kismet Int’l, supra, the Appellate Division had already determined that Kismet’s drivers were employees; not independent contractors. Respondent also asserted that Kismet could not dispute the Department’s calculation of unpaid wages, because the Department had used Kismet’s own records to calculate the back pay liability. Those records include “invoices” that had been issued by Kismet to drivers listing cash due each driver from fares, minus charges against the drivers for car leasing and security deposit payments. In opposition, petitioners made no argument regarding the merits of the Department’s assessment for violations of the New Jersey Wage and Hour Law (WHL) and New Jersey Wage Payment Law (WPL), nor did petitioners take issue with the amounts assessed by the Department for those violations. Instead, petitioner sought only to relitigate the employment status of its drivers; the issue which had already been adjudicated in Kismet, Int’l, supra.

The ALJ granted respondent’s motion for summary decision, finding the following:

“The Department is entitled to summary decision disposing of Kismet’s appeal because there are no genuine issues of material fact necessitating a hearing to resolve whether Kismet violated the [WPL and WHL] or the amount the company owes for those violations. Crucially, in opposition to the Department’s motion, Kismet failed to provide a responding affidavit, as required by N.J.A.C. 1:1-12.5, ‘set[ting] forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.’

In this regard, Kismet failed to raise genuine issues regarding the Department’s allegation that the company violated various provisions of the WPL and the WHL with respect to its employees and did not address the appropriateness of the Department’s assessments for those violations. Instead, Kismet attempts by way of its brief to relitigate whether the drivers are independent contractors and not employees.

Kismet, however, is precluded from making that argument here under the doctrine of collateral estoppel, which ‘is that branch of the broader law of *res judicata* which bars re-litigation of any issue which was actually determined in a prior action,

generally between the same parties, involving a different claim or cause of action.’ State v. Gonzalez, 75 N.J. 181, 186 (1977). Clearly, Kismet’s drivers were determined to be employees in Kismet Int’l, a prior action between Kismet and the Department involving a cause of action under the Unemployment Compensation Law. Moreover, as the Supreme Court made clear in Hargrove v. Sleepy’s, LLC, 220 N.J. 289 (2015), ‘the ABC test derived from the New Jersey Unemployment Compensation Act, N.J.S.A. 43:21-19(i)(6), governs whether a plaintiff is an employee or independent contractor for purposes of resolving a wage-payment or wage-and-hour claim.’ Thus, because the drivers were determined to be employees under the ABC test in Kismet Int’l, they are also ‘employees’ for purposes of the WPL and the WHL in this case, and Kismet is estopped from arguing otherwise.

...

For these, reasons, the Department has successfully made and supported its motion with respect to Kismet’s liability for violations of the WPL and WHL. And because the Department has provided support for the payments it seeks for those violations, and Kismet has not raised any genuine questions challenging those calculations, the Department is also entitled to summary decision on the issue of back wages and administrative fees and penalties.”

Therefore, the ALJ recommended that the Department’s assessment against petitioners for \$290,316.81 in unpaid wages, an administrative fee in the amount of \$52,257.03, and penalties in the amount of \$25,500.00, be affirmed and that petitioners’ appeal be dismissed. No exceptions were filed.

Upon *de novo* review of the record, and after consideration of the ALJ’s initial decision, I hereby accept and adopt the findings of fact, conclusions and recommendation contained in the ALJ’s initial decision.

ORDER

Therefore, it is hereby ordered that respondents pay to the Department \$290,316.81 for wages owed, plus \$52,257.03 in an administrative fee and \$25,500.00 in penalties.

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


Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development

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