Intron Group, 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 12758-17
AGENCY DKT. NO. DOL 17-017

Issued: August 24, 2018

The appeal of Intron Group, LLC ("Intron" or "Petitioner"), an information technology company, concerning an assessment by the New Jersey Department of Labor and Workforce Development ("Department" or "Respondent") for unpaid contributions to the unemployment compensation fund and the State disability benefits fund for the period from 2009 through 2012, was heard by Administrative Law Judge Jeffrey N. Rabin ("ALJ").

The appeal stemmed from the Department's August 18, 2014 assessment that Petitioner owed $45,692.13 in unpaid contributions, plus interest and penalties. (Initial Decision, p. 2). The appeal was transmitted to the Office of Administrative Law, where it was filed on August 30, 2017 as a contested case. A hearing was held on May 1, 2018, and the parties were given until June 1, 2018 to submit post-hearing briefs. The parties did not timely file their briefs (both were filed on June 8, 2018), and the ALJ closed the record without accepting the late-filed briefs. (Initial Decision, p. 2).

The sole issue on appeal was whether the personnel in question were employees of the Petitioner within the meaning of N.J.S.A. 43:21-19(i)(6)(A)-(C), or whether they were bona fide independent contractors. Under the Unemployment Compensation Law,

employee status is presumed unless an employer can prove that an individual meets all three prongs of the "ABC" test, which analyzes whether an individual was under the direction or control of the employer; whether the work was outside of the usual course of business for which such service was performed; and whether such individual was customarily engaged in an independently established trade, occupation, profession, or business. In order to have an individual classified as an independent contractor, an employer must meet all elements of this test.

According to the testimony of its auditors, the Department determined that Petitioner controlled its consultants "by procuring outside jobs for them," and further that "none of them had independent trades or jobs." (Initial Decision, p. 3). For example, consultant Chichi Anene-Okeke was placed with one of Petitioner's clients by the Petitioner; was paid by Petitioner; had no other clients or source of income; and provided his services at the client's place of business. (Initial Decision, p. 4). As another example, Petitioner placed BHLM, Inc., with one of its clients; paid BHLM directly; BHLM had no other clients or source of income; and provided services at the client's place of business. (Initial Decision, pp. 4-5). As a third example, Petitioner placed Kapoor Techtran, LLC, with one of its clients; paid Kapoor directly; and Kapoor had no other clients or sources of income. (Initial Decision, p. 5). Overall, according to the Department's auditors, there were 13 instances of individuals or entities that were inappropriately designated as independent contractors. (Initial Decision, p. 7, 18).

The ALJ accepted the testimony of the Department's auditor as credible, given his long experience in the field (having performed over 2,500 payroll audits in his 26 years with the Department). (Initial Decision, p. 10). By contrast, the ALJ did not find the testimony of Al Schmitt, Respondent's managing partner, credible. (Initial Decision, p. 12). The ALJ found that Schmitt "often had difficulty answering questions, often answered questions evasively, and circumvented issues during cross-examination." (Initial Decision, p. 12).

The ALJ found that Petitioner failed to establish that any of its subcontracted workers or companies, except one, met all three elements of the ABC test. (Initial Decision, p. 14). Consequently, these individuals and entities should have been considered employees.[1] (Initial Decision, p. 18). The ALJ affirmed the Department's assessment that contributions were due in the amount of $45,692.13, plus interest due of $44,504.45, plus a penalty of $8,734.90, for a total amount due of $98,931.48.

The Petitioner did not file exceptions.

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[1] The ALJ reached this determination for the year 2010. As both parties acknowledged that the same payment and employment methods were in use from 2009-2012, the ALJ concluded that the same findings should be made for the whole of this 4-year period. (Initial Decision, p. 18).

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, I have accepted and adopted the findings of fact, conclusion, and recommendation contained in the ALJ's initial decision.

ORDER

The initial decision of the ALJ is affirmed and Petitioner's appeal is hereby dismissed.

Petitioner is hereby ordered to immediately remit $98,931.48 to the Department, representing its unpaid unemployment and disability contributions for the years 2009 to 2012, plus interest and 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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