

**BLOGS**

Employment

Franchised Black-Car Drivers Are Not Employees for Purposes of Federal and State Labor Laws

The Second Circuit Court of Appeals recently affirmed a decision that franchised black-car drivers using a franchisor dispatching service were independent contractors, not employees, of the franchisor. In *Saleem v. Corporate Transportation Group*, 2017 WL 1337227 (2d Cir. Apr. 12, 2017), the plaintiffs-appellants were black-car drivers in the tri-state area who owned black-car franchises. The defendants-appellees were a group of related transportation companies known as Corporate Transportation Group (“CTG”) that owned “base licenses” that allowed them to operate black-car dispatch bases in New York City, and to sell franchises to individual drivers. CTG provided billing, referral, payment, bookkeeping, accounting, voucher processing, and dispatching services for the franchisees. The black-car drivers brought an action against CTG pursuant to the Fair Labor Standards Act (“FLSA”) and the New York State Labor Law (“NYLL”) for, among other things, unpaid overtime. The dispositive issue was whether the black-car drivers were properly classified as independent contractors, rather than employees.

The district court granted the transportation companies summary judgment on both the FLSA and NYLL claims, concluding that as a matter of law, the black-car drivers were properly classified as independent contractors rather than employees for purposes of both statutes. The black-car drivers appealed, arguing that they should have been classified as employees because CTG exercised control over all significant aspects of its business, including its roll of institutional clients and its development and operation of the dispatch system. The drivers also argued that CTG negotiated rates with clients, charged a per-ride fee to drivers, and exerted influence over them by enforcing standards indirectly through a driver committee and occasionally through the president of CTG.

In sustaining the decision of the district court, the Second Circuit cited the facts that the black-car drivers exercised their independent business acumen in choosing the manner and extent of their affiliation with CTG; were able to work for rival black-car services, cultivated their own clients, and picked up street hails; made substantial investments in their businesses; and determined when, where, and how regularly to work. In sum, the court held that the economic reality was that the black-car drivers, with the assistance of CTG and as subscribers to its services, operated small businesses; they decided to affiliate with CTG based on their perceived economic interests, and not those of CTG.

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