

# CLIENT ALERT

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### **New Jersey Supreme Court: No Collateral Estoppel For Unemployment Rulings**

The New Jersey Supreme Court recently addressed the collateral estoppel effect of an unemployment benefits ruling in a subsequent lawsuit by a claimant against her former employer. In *Olivieri v. Y.M.F. Carpet, Inc.*, the Court considered whether an employee's successful application for unemployment benefits precluded the employer in a subsequent lawsuit from arguing that the employee had voluntarily resigned from her position. In a decision that should please both employees and employers, the Court held that such a ruling does not have collateral estoppel effect.

#### **The Facts**

Plaintiff Joanne Olivieri worked part-time as a collection clerk for defendant Y.M.F. Carpet, Inc. ("YMF"), a carpet, rug, bathmat, and tile wholesaler owned by Frieda and Jacob Shemesh. While Olivieri was contacting customers who owed balances to YMF, she began to suspect that a former salesperson, Shloami Levi, had collected payments from customers and not credited them to the customers' accounts. Olivieri reported her suspicion to YMF.

At YMF's request, Olivieri prepared a Special Civil Part Complaint against Levi and compiled invoices supporting the Complaint. According to Olivieri, one of YMF's owners prepared false receipts corresponding to the invoices in order to bolster the claim that Levi had misappropriated the sums reflected in the invoices. The owner then, according to Olivieri, asked Olivieri to sign the sales receipts and attach them to the invoices on file, but she refused.

Over the course of the next several months, Olivieri repeatedly demanded that YMF move her to a full-time position with a

corresponding increase in compensation and benefits. Her discussions with Jacob Shemesh regarding this issue became increasingly confrontational. Olivieri wrote YMF a series of letters complaining about her treatment, the last of which she distributed to YMF's employees.

When Frieda Shemesh learned that Olivieri had distributed her letter to the other employees, she initiated a discussion with Olivieri. Olivieri began yelling at Frieda, and Frieda suggested that Olivieri go home, calm herself down, and return to work the next day so that they could complete the discussion. After Olivieri left, Frieda sent a letter to her. In the letter, Frieda indicated, "[w]e would like you to continue to work here at [YMF], however, we do not want to continue to have you behave in a hostile manner .... If you cannot work under these conditions perhaps you should consider employment elsewhere." Frieda further expressed her "hope that we can continue to work together in an orderly and civilized manner."

Olivieri left work that day and never returned. Three days later, she filed a claim for unemployment benefits.

#### **Unemployment Proceedings**

Olivieri's application for unemployment benefits was initially denied on the ground that she had voluntarily left her job without good cause. Olivieri appealed and a hearing was conducted before an appeals examiner. Olivieri appeared for the hearing with counsel and Frieda participated by telephone. The appeals examiner found that Olivieri had been asked to leave work after refusing to falsify a report and, therefore, did not voluntarily resign. YMF appealed to the Board of Review, which affirmed the decision.

## The Lawsuit

Meanwhile, Olivieri filed a lawsuit under the Conscientious Employee Protection Act ("CEPA"), alleging that YMF had terminated her employment in retaliation for her refusal to provide false testimony or documentation in connection with the Complaint against Levi. Before trial, the court considered Olivieri's *in limine* application: (1) to offer the written unemployment compensation appeals examiner and Board of Review determinations into evidence as proof that she had been terminated from her employment with defendant; and (2) for a ruling that, as a matter of law, Olivieri's employment was terminated on September 6, 2001. YMF opposed Olivieri's application on the ground that the unemployment determination was not entitled to collateral estoppel effect.

The trial court granted Olivieri's application, stating that the issue of whether Olivieri had been terminated or left her employment voluntarily "has been adjudicated in a competent forum which has expertise in the area, and ... it was found in her favor that she was fired." The trial court noted that Olivieri would still bear the burden of proving that her termination violated CEPA.

The jury returned a verdict in Olivieri's favor and, including prejudgment interest and attorneys' fees, she was awarded a total of \$105,871.97.

## The Appellate Division

The Appellate Division reversed. According to the Appellate Division, the unemployment compensation determination was not entitled to collateral estoppel effect "because of the difference in the 'quality and extensiveness' of the procedures followed in the informal proceeding before the unemployment hearing

examiner as compared to the formal proceeding in the Law Division." Olivieri appealed to the New Jersey Supreme Court.

## The Supreme Court

The Supreme Court affirmed the judgment of the Appellate Division. The Court agreed with the Appellate Division that a new determination of the issues was warranted by differences in the quality and extensiveness of the procedures followed in unemployment compensation and judicial proceedings.

The Court explained that it was not clear from the record whether the unemployment proceedings had been recorded (which is necessary for a meaningful review), and whether witnesses testified under oath or were subject to cross-examination. The Court indicated that, as a result, it also could not be "certain that only competent evidence was received by the unemployment compensation examiner" or that "the decision of the appeals examiner was fairly based on the proofs adduced before him."

In addition, the Supreme Court considered the purposes behind the unemployment compensation system including, in particular, quickly providing emergency relief to deserving claimants. The Court explained that "the very strengths of the unemployment compensation scheme in respect of the award of benefits becomes its weaknesses." Specifically, "its speed of decision-making inhibits the deliberative process; its underlying purpose, the almost presumptive payment of unemployment compensation benefits, is at odds with a process that values a level playing field; and the disparity between what is at stake between an employer and an employee skews the results."

The Supreme Court also explained that the "great weight of authority" from courts in other states supported its decision. Thus, the Court concluded that "because of their procedural limitations (their informality and lesser safeguards) and their different purposes (to provide speedy and inexpensive unemployment benefits), unemployment compensation proceedings do not afford litigants a full and fair opportunity to litigate factual issues sufficient to warrant collateral estoppel effect."

## Conclusion

*Olivieri v. Y.M.F. Carpet, Inc.* should be a welcome decision for employers and employees alike. Had the Supreme Court agreed with the trial court regarding the preclusive effect of unemployment compensation proceedings, it would have greatly complicated the unemployment compensation system. Parties would likely have begun investing significantly more time and resources into unemployment proceedings, which would have slowed them down and increased their cost, to the detriment of all.

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