

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## The New Jersey Supreme Court Ruled that the Written Agreement Between a Real Estate Broker and a Real Estate Salesperson Outlining Whether the Relationship is One of Employer-employee or as an Independent Contractor is Enforceable

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Plaintiff James Kennedy, II, was a real estate salesperson who entered into written agreements with defendant Weichert Co. pursuant to which they agreed Kennedy was an [independent contractor](#) of Weichert. In his lawsuit, Kennedy claimed Weichert had violated the Wage Payment Law by misclassifying him (and other real estate salespersons) as independent contractors and unlawfully deducting marketing fees and other expenses from commissions.

In denying Defendant Weichert's Motion to Dismiss, the trial court found that the Plaintiff's status was not determined by his agreement with Weichert, but by the legal standard that generally governs employee classification issues under Wage Payment Law, also known as the "[ABC Test](#)".

Weichert appealed, and the Appellate Division found that the written contract between a real estate salesperson and the salesperson's broker is just one of several factors to be considered in determining whether a real estate salesperson is an independent contractor or employee, and that the ABC Test shall also be considered.

Thereafter the Legislature amended the Brokers Act.

The Supreme Court relied upon the clear express language of the New Jersey Brokers Act and found that a written agreement entered into between a real estate salesperson and the salesperson's broker identifying the relationship as an independent contractor relationships is enforceable.

The Supreme Court's decision in this matter is a significant one. Its rejection of the ABC Test and reliance on and enforcement of the written contract between the real estate salesperson and the salesperson's broker, when one exists, gives the real estate professionals the autonomy to determine the nature of their relationship by way of contract. The result is that real estate salespeople who contract as independent contractors may be able to write-off costs incurred in the performance of their work, such as support staff, vehicle costs for business purposes, equipment depreciation, advertising costs, meals, business related travel, continuing education expenses, insurance costs, dues, and licensing fees, among other expenses. Additionally, they are able to set their own hours and schedules and determine how much or how little they work.

Takeaway: Written agreements between real estate salespersons and brokers concerning their employment relationship are enforceable. This is only one exception to the ABC test for independent contractors. The [misclassification](#) of an individual is a risk for employers that contains a significant monetary consequence. If you have any questions regarding misclassification of individuals, please reach out to any attorney on our [Employment Law](#) team.

### Attorney

- Tracy Armstrong

## Practice

- Employment Law