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INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK
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In the Matter of the Petition of: NEW YORK HARM REDUCTION EDUCATORS, INC., Petitioner, To review under Section 101 of the New York State Labor Law an Order to Comply with Article 6 of the Labor Law issued August 10, 2007 -against- THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 07-057

INTERIM RESOLUTION OF DECISION

WHEREAS:

The Petition for review in the above-captioned case was received by the Industrial Board of Appeals (Board) on October 11, 2007. The Petition seeks review of an Order to Comply with Article 6 of the Labor Law (Order) that the Respondent Commissioner of Labor (Commissioner) issued on August 10, 2007, finding the Petitioner in violation of Labor Law § 193 for deductions in the amount of $2,180.00 from the wages of one named Complainant. The Order directs payment of $2,180.00 in deductions due and owing together with $366.00 in interest at 16% per annum calculated to the date of the order, and a civil penalty in the amount of $2,180.00, for a total amount due of $4,726.00. The Commissioner filed a Motion to Dismiss dated November 5, 2007 and an Answer dated November 20, 2007. The Petitioner filed its opposition to the Commissioner's motion on February 20, 2008.

The Petitioner admits in its Petition that it deducted $2,180.00 from the Complainant's wages, but asserts that the Complainant authorized the deduction to compensate the Petitioner for money the Complainant had allegedly admitted to stealing from the Petitioner. The Petition asserts that the Petitioner terminated the Complainant's employment because of the alleged thefts and reported the Complainant to the New York City Police Department (NYPD) which initiated

a criminal investigation. Based on the Complainant's representation to the NYPD that he had repaid the stolen funds through the wage deduction, the NYPD did not arrest him.

The Petition asserts that the Complainant then filed a claim with the New York State Department of Labor (DOL) complaining about the deduction from his wages. The Petitioner informed the NYPD about the wage claim, and the Complainant was subsequently arrested for grand larceny. A representative of the Petitioner has since testified before a Bronx County Grand Jury in this matter.

The Petition also states that the Petitioner has informed the Bronx County District Attorney, the Complainant, and DOL that it will drop its charges against the Complainant if the Complainant withdraws his wage claim, and DOL vacates its Order.[1]

Finally, the Petition asserts there is no basis for the imposition of a civil penalty in this matter.

The Commissioner, by her attorney Maria Colavito, counsel to DOL, Jeffrey G. Shapiro of counsel, filed a Motion to Dismiss the Petition asserting that even assuming all the facts alleged in the Petition to be true, the deduction violated Labor Law § 193 as a matter of law. We agree that as a matter of law it is a violation of Labor Law § 193 for an employer to make deductions from an employee's wages to recover funds allegedly stolen by such employee.

Labor Law § 193 provides in relevant part that:

> "1. No employer shall make any deduction from the wages of an employee, except deductions which:
>
> a. Are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or
>
> b. Are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee."

The Petitioner admits that it deducted $2,180.00 from the Complainant's wages, and while this deduction may have been authorized by the Complainant in writing, and may even have arguably been for his benefit to avoid arrest, the deduction of money from an employee's wages to recover money that was allegedly stolen by that employee is not authorized by any statute, rule or regulation, and is not similar to the allowable deductions enumerated by the statute (*see Matter of Angello v. Labor Ready*, 7 NY3d 579, 584 [2006] [deductions from wages allowed by Labor Law § 193 are for monetary or supportive benefit to an employee]).

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[1] The Petitioner asserts in its opposition to the Commissioner's Motion to Dismiss that the Complainant has agreed to withdraw his wage claim, but DOL refuses to vacate its Order.

For the reasons set forth above, we grant the Commissioner's motion and dismiss the Petition in so far as it alleges that the Order is unreasonable or invalid for finding that the Petitioner violated Labor Law § 193.

The Petition also challenges the imposition of a civil penalty which requires findings of fact. Accordingly, the Petitioner's claim that there is no basis for the imposition of a civil penalty will be processed in accordance with the Board's Rules of Procedure and Practice.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT

1. The Motion to Dismiss is granted and the Petition is dismissed in so far as it alleges that the Order to Comply issued August 10, 2007, is unreasonable with respect to the finding that the Petitioner violated Labor Law § 193; and.
2. The claim in the Petition that the imposition of a civil penalty in this matter is unreasonable or invalid shall be processed in accordance with the Board's Rules of Procedure and Practice.

Anne P. Stevason, Chairman

ABSENT
Gregory A. Monteleone, Member

Susan Sullivan-Bisceglia, Member

J. Christopher Meagher, Member

Mark G. Pearce, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 23, 2008

Filed in the Office of the
Industrial Board of Appeals
at Albany, New York on
April 25, 2008

DAR