

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 AKIVA EMERGI AND EYAL OVADIA AND HOD :
 CONSTRUCTION CORP. AND SUPER HOMES, :
 INC. D/B/A SUPERIOR HOMES, :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply with Article 6 of the Labor Law, :
 dated July 18, 2008, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 08-128
RESOLUTION OF DECISION

APPEARANCES

Bruce H. Lederman, Esq., for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin T. Garry of Counsel, for Respondent.

WITNESSES

Akiva Emergi and Eyal Ovadia for the Petitioners; Labor Standards Investigator Pierre Magloire, Senior Labor Standards Investigator Geovanna Giraldo, Inoncencio Reyes Navarrete, Carlo Villeda, Anibal Zuniga, Romulo Farez, Edwin Velasquez and Edwin Galindo for the Respondent.

WHEREAS:

The Petition for review in the above-captioned case was timely filed with the Industrial Board of Appeals (Board) on August 28, 2008. Upon notice to the parties a hearing was held on June 11 and August 12, 2009 in New York, New York, before Devin A. Rice, Associate Counsel to the Board and the designated Hearing Officer in this proceeding. Each

party was afforded a full opportunity to present documentary evidence, to examine and cross-examine witnesses, to make statements relevant to the issues, and to file post-hearing briefs.¹

The Order under review was issued by the Respondent Commissioner of Labor on July 18, 2008 against Akiva Emergi and Martin J. Bruten and Eyal Ovidia (sic) and HOD Construction Corp. and Super Homes, Inc. also T/A Well-Built Construction Corp. and directs compliance with Article 6 of the Labor Law. The Order directs payment to the Commissioner for wages due and owing to 22 named claimants in the amount of \$64,825.49 for the time period from February 6, 2007 through March 6, 2008, with interest continuing thereon at the rate of 16% calculated to the date of the Order, in the amount of \$4,006.25, and assesses a civil penalty in the amount of \$48,619.00, for a total amount due of \$117,450.74. Akiva Emergi, Eyal Ovidia, HOD Construction Corp. and Super Homes, Inc. appealed the Order. Martin J. Bruten and Well-Built Construction Corp. did not appeal the Order or otherwise appear in this proceeding.

At the beginning of the hearing, the parties stipulated to amend the Order to correct the spelling of Ovidia to Ovidia. During the second day of the hearing, the Respondent agreed to further amend the Order to remove Akiva Emergi and Super Homes, Inc. because the evidence did not support a finding that they were liable as “employers” under Article 6 of the Labor Law for the wages due and owing.

SUMMARY OF EVIDENCE

Petitioners’ Evidence

Akiva Emergi (Emergi) is a real estate developer. He is the sole officer and shareholder of Super Homes, Inc. d/b/a Superior Homes, a brokerage company that buys and sells real estate. He is also the sole officer and shareholder of numerous corporations that own real estate in New York City. One such corporation, 84-24 Lefferts Boulevard Corp., owns the property at 84-24 Lefferts Blvd, Kew Gardens, New York (“84-24 Lefferts” or “the project”), where the work at issue in this appeal took place.

Emergi hires general contractors to construct buildings on the properties that his corporations own. The general contractors are responsible for all aspects of the construction. Emergi hired HOD Construction, Inc. as the general contractor to develop several of his properties, including the property at 84-24 Lefferts.

Emergi testified that his only role in developing the property at 84-24 Lefferts was to hire an architect to develop plans, and then to hire the general contractor, HOD Construction, Inc. to follow the architect’s plans. Emergi explained that it was the responsibility of HOD to hire the subcontractors from the various trades such electrician, plumbing, and masonry to construct the building.

¹ At the conclusion of the hearing the hearing officer advised the parties that there were several legal issues to be briefed for the Board. By letter dated September 3, 2009, the Hearing Officer requested that the Petitioners file their brief on or before October 15, 2009, and that the Respondent’s reply brief, if any, must be filed on or before October 30, 2009. The Petitioners filed a brief on October 1, 2009. The Respondent failed to file a brief in this matter or to request additional time to file a brief.

Other than hiring HOD Construction, Emergi was not actively involved with the construction work at the project. He did not hire any of the subcontractors on the job or any of their employees, he did not interview employees, and he did not supervise the work. The Commissioner stipulated during the hearing that Emergi and Super Homes, Inc.² were not employers under Article 6 of the Labor Law for purposes of the Order.

Eyal Ovadia is the president and owner of HOD Construction, Inc. He was hired by Emergi to build two four family homes at 84-24 Lefferts. Ovadia testified that he had a contract with Emergi for a set amount to build the entire project and that as general contractor he hired subcontractors to perform each individual part of the construction process and split the contract price with them. He hired an electrical subcontractor, a plumbing subcontractor, a carpentry subcontractor, a masonry subcontractor, and other subcontractors as needed to complete the project. The masonry subcontractor Ovadia hired to do the block and brick work at 84-24 Lefferts was Martin Bruten doing business as Well Built Construction Corp.³

Ovadia and Bruten agreed in writing on November 15, 2008 that Well Built Construction Corp. would complete certain brick and block work on the project to be paid by the square foot based on the standard market price for such work. Ovadia testified that HOD Construction, Inc. was responsible for supplying Well Built with materials and Well Built was to supply the labor. Ovadia had hired Well Built on past projects, and this was the first time he was aware of a labor problem involving Well Built.

Ovadia testified that he paid Well Built each week by check according to the amount of square footage completed that week. Ovadia gave the checks directly to Bruten and never made any cash payments. Ovadia testified that Well Built was fully paid for all work they performed on the project.

Ovadia testified that he was the only employee of HOD monitoring the work at 84-24 Lefferts. He kept track of the progress of the construction by visiting the work site a few times each day, but did not actually supervise the employees of the various subcontractors or give them instructions. Martin Bruten supervised Well Built's employees. Ovadia testified that he also believed that Well Built had "another foreman" whose name he did not know who supervised Well Built's employees. Ovadia testified that he knew an individual named "Anthony" who worked for Well Built.

The majority of the time, when Well Built needed additional materials, Bruten would contact Ovadia to request the materials and Ovadia would order them and arrange for the delivery. Ovadia would occasionally see what materials were missing and make the order himself.

According to Ovadia, he did not interview or hire any of Well Built's employees nor does he have any personal experience with brick and block work.

² The parties stipulated to remove Emergi and "Superior Homes" from the Order; Superior Homes is a D/B/A used by Super Homes, Inc. therefore the Order was amended to remove Super Homes, Inc.

³ There was testimony at hearing that Martin Bruten was fraudulently using the name "Well Built Construction Corp." which in fact was owned and operated by a police detective who informed DOL that he had closed that company several years ago and did not know and had never heard of Martin Bruten.

Ovadia testified that at some point during the construction work at 84-24 Lefferts, one of Well Built's employees told him while he was visiting the site that Well Built had not paid its employees for "the last week." At around the same time, approximately 20 of Well Built's employees visited Ovadia at the office he shares with Emergi to complain that Well Built had not paid them. Ovadia invited one of the employees into his office to discuss the matter while the other employees waited outside. Ovadia explained to this employee that he had paid Well Built and that it was not his responsibility to pay Well Built's employees but that he would attempt to contact Bruten regarding the situation. According to Ovadia, Anthony was not present during this meeting.

Ovadia telephoned Bruten over the next few days but was unable to reach him and believed that Bruten had "disappeared." Ovadia then hired a new masonry subcontractor with an entirely different crew of workers to complete the brick and block work on the project.

Respondent's Evidence

Inocencio Reyes Navarrete testified that he worked at 84-24 Lefferts for approximately three months as a brick layer at the pay rate of \$200.00 per day. Navarrete testified that the person in charge initially was "Martin" [Bruten]. Navarrete stopped working at the project because he was not being paid.

Navarrete went with some of the other masonry workers from the project to the office HOD shares with Emergi to complain that they had not been paid. Navarrete testified that both Ovadia and Anthony were present at the office then. Ovadia called Navarrete into the office while the other workers waited outside. Navarrete spoke to Ovadia who told him "not to worry about it, that there are two floors that need to be finished, that keep working and he will pay us." Ovadia also informed Navarrete that "the day that I will pay [you] guys, you are going to be here with Anthony so you will see that I'm paying." This conversation was in English, although Navarrete speaks "little English." Nonetheless, Navarrete believed that he and Ovadia understood each other.

Navarrete testified that based on these assurances by Ovadia, he and the other workers went back to work at 84-24 Lefferts and continued working for six days to finish two floors, but were never paid for that work.

Navarrete testified that while he was working at 84-24 Lefferts Blvd, he observed Ovadia at the job site. Ovadia "used to go there. He used to see everything, see the – he was looking at the job, and then he used to talk to [Anthony], and then he left."

Navarrete worked for Well Built at other jobs prior to working at 84-24 Lefferts. Navarrete did not believe that Ovadia was involved with those other jobs.

Navarrete testified that there were problems with payment during the entire time that he worked at the project, and that although he did receive some payments from Bruten, he was never paid the full amount of wages that he was owed each week.

Navarrete testified that Anthony was a supervisor who worked with Martin, but there were "problems [between them] because of the pressure of not payment" and that "Anthony

was blaming Martin because of the non-payment, so Ovadia and him they made a deal, so he got the job, Anthony.” Navarrete also testified that Ovadia was present at the project on February 29 and observed the workers who refusal to leave because they had not been paid.

Carlos Villeda testified that he worked as a brick layer for Anthony at a project at 84-24 Lefferts from February 25, 2008 through February 29, 2008. Anthony was always there and was in charge of everything including scheduling the work hours and getting the materials. Villeda did not know for sure whether he worked for Superior Homes Realty or HOD Construction, although he did see both their signs at the work site.

On February 29, 2008, just prior to the normal starting time for the work day, Anthony told Villeda and the other brick layers that he didn’t want them to start working because “they already had another group working there . . . to finish the job.”

Villeda was among a group of about 15 other workers who refused to leave the work site until they were paid. Eventually the police came and told the workers they could not get involved in labor disputes and that they would arrest them if they did not leave. The police advised the workers to file a complaint with DOL.

Anibal Zuniga testified that a year prior to the hearing he worked for a while as a bricklayer for Bruton and Anthony at the project, and that he was promised a pay rate of \$900.00 in cash to work six days a week from 7:00 a.m. to 5:00 p.m. Zuniga complained to Anthony because he was never paid the full amount that he was owed, but each time he complained Anthony told him that “they were having some problems with the money.”

Eventually, Bruton and Anthony blamed “the company” for failing to pay Zuniga and referred him to the office shared by Emergi and Ovadia in Jamaica, New York. Zuniga further testified that he went with a group of other workers to that office to ask for their wages. Only Navarrete was allowed into the office to speak to “the boss” who was identified by Zuniga as Ovadia. After speaking to Ovadia, Navarrete told the other workers that “we have to finish the two floors and that they will pay us all the money owed.” Zuniga testified that at some point, Anthony also told him that “the company” would pay him an additional \$50.00 if he stayed on to finish the work.

Zuniga and the others worked for seven days after the meeting at the office until the day when Anthony told them that they were no longer needed and the police came to remove them from the property. Zuniga testified that on that day, he saw Ovadia at the work site and witnessed him speaking to Anthony inside a car.

Romulo Farez testified that he worked for Anthony as a brick layer at the construction at the project from February 10, 2008 to February 28, 2008 but was not paid for all of the days he worked. Farez started work with a team of ten other workers. When he started there was also another group there until the police came and “threw them out.” Farez’s group continued working after the other group was thrown out by the police. Farez testified that Anthony was his supervisor and that somebody else who he believed was from “something like Home Reality” also came to the site to check on the work.

Edwin Valasquez testified that he worked at the project at 84-24 Lefferts as a helper. Bruten told him that he worked for Superior Homes. Bruten paid him his wages in cash, but he never paid him the full amount.

Velasquez and other workers from the project went to the Superior Homes office to demand their pay. Velasquez stayed outside with the other workers when Navarrete went inside to speak to Ovadia. When Navarrete returned after about 30 minutes, he told the workers that Ovadia agreed to pay them if they continued working at the project. Because of this, Velasquez and the other workers continued working at the site.

Ovadia came to the site several times after the meeting to observe the work. Eventually, Velasquez stopped working at the project because he had not been paid.

Edwin Galindo testified that he was also a helper at the project. Bruten told Galindo that they were working for "the company." Galindo saw Ovadia at the work site looking over the work, but Ovadia never spoke to him.

Anthony promised to pay Galindo \$100.00 per day and also supervised Galindo's work. Galindo observed Anthony communicating with Bruten and Ovadia.

Galindo believed that Ovadia paid Bruten and that Bruten then paid the workers, although he never saw Ovadia pay Bruten. Bruten paid Galindo his wages in cash, but he was never paid the correct amount.

Labor Standards Investigator (LSI) Pierre Magloire testified that he was assigned to investigate several claims that had been made against Superior Homes. LSI Magloire did not contact the claimants or do any independent verification of the claims because he does not speak Spanish.

LSI Magloire computed the amount of unpaid wages by transcribing the information contained in the claim forms with respect to hours worked and promised wage rates into a spread sheet and crediting the amount of wages already paid. This computation sheet or "recap sheet" was hand delivered to the Petitioners at the office they share in Jamaica, New York and mailed to Martin Bruten and Well Built Construction⁴ at the address DOL had on file for them which was verified by subpoena and mail trace. Emergi, Superior Homes, Bruten, and Well Built Construction failed to respond to the allegations made by DOL in the recap sheet.

Ovadia telephoned LSI Magloire and explained that his company, HOD Construction, hired a subcontractor, Martin Bruten and Well Built Construction, to do the brick and block work at the project. Additionally, Ovadia sent LSI Magloire copies of the November 15 written agreement between HOD and Well Built and cancelled checks made out to Well Built Construction. LSI Magloire believed that Ovadia was representing HOD and was also a manager at Superior Homes.

⁴ Magloire testified that when he attempted to contact Well Built Construction at the address listed in the corporate records, a police detective contacted him to inform him that he had closed that company several years ago and it appeared somebody else was using the company's name.

Magloire presented all of this information to his Senior Investigator, Geovanna Giraldo, and also to Supervisor Ronald Coxum, and did no further work on the case.

Senior Labor Standards Investigator (SLSI) Geovanna Giraldo testified that she reviewed the file prepared by LSI Magloire and prepared the case for issuance of an Order to Comply. She determined that a 75% civil penalty should be assessed against all of the parties named in the Order and in determining such amount, considered the number of claimants, the long period of underpayment, and the level of cooperation of the employers.

SLSI Giraldo believes that Well Built was only one of the employers responsible for the unpaid wages and that HOD was ultimately responsible because “HOD should have been aware if the claimants were getting paid or not.”

SLSI Giraldo testified that none of the entities named in the Order produced any wage or time records. She believes that HOD should have kept time records for Well Built’s employees, because general contractors often supervise subcontractors’ payroll records to make sure everything is being done properly on a project.

Petitioners’ Rebuttal

Ovadia testified that a group of 20 workers came to his office one day complaining that Bruten had not paid them. Ovadia spoke to only one of the workers while the rest waited outside. He told the worker that he had paid Bruten and that it was Bruten’s responsibility to pay the workers, but that he would try to reach Bruten to find out what was happening. Ovadia testified that he never promised to pay the owed wages, and that Anthony was not present at this meeting. Additionally, Ovadia could not remember whether he ever saw Anthony at the project subsequent to this meeting. He further testified that he never promised to pay Zuniga extra money to stay on and finish the work at the project.

Ovadia subsequently telephoned Bruten several times but could not reach him. Over the next few days, he saw the workers at the project and assumed that since they were still working, Bruten had paid them. After he realized that Bruten was not coming back, he hired a new subcontractor called Dvirmig to complete the brick and block work at the project. Dvirmog had an entirely different group of workers from Bruten’s crew.

FINDINGS AND CONCLUSIONS OF LAW

The Board makes the following findings of fact and law pursuant to the provision of Board Rules 65.39 (12 NYCRR 65.39).

It is undisputed that Emergi hired Petitioners HOD and Ovadia to build two four family homes at 84-24 Lefferts, and that HOD and Ovadia in turn hired Well Built and Bruten to complete the brick and block work on the project. Likewise, the parties do not dispute that the claimants were employed by Well Built and Bruten as brick layers and helpers and that they worked on the project during the time period covered by the Order and were not paid all of the wages owed to them for the work they performed.

Petitioners HOD and Ovadia, however, assert that as the general contractor they are not responsible for unpaid wages due and owing to their subcontractor's employees. They argue that:

“The law in New York regarding liability of a[n] owner or general contractor for wages of [a] subcontractor's employee are limited by basic privity of contract. Absent some statutory exception, a general contractor (much less its president) is simply not liable for the unpaid wages of a subcontractor. Here, there is no basis for deviating from basic contractual privity of contract rules. The only known exceptions to basic privity of contract rules are either in Labor Law 222 which applies only to ‘public works,’ or mechanic's lien claims and there are no filed mechanics lien[s] and there can be none since the workers have worked on the project more than eight months ago.”

We disagree. Under Article 6 of the Labor Law, any “employer” may be liable for the unpaid wages of its employees; and the Petitioners bear the burden in this proceeding of proving that the Commissioner's determination that they were employers under Article 6 of the Labor Law was unreasonable or invalid (Labor Law § § 101 and 103; Board Rules 65.30 [12 NYCRR 65.30]).

Definition of “Employer” under Article 6 of the New York Labor Law

“Employer” is defined in Article 6 of the Labor Law as “any person, corporation or association employing any individual in any occupation, industry, trade, business or service” (Labor Law § 190 [3]). “Employed” means “suffered or permitted to work” (Labor Law § 2 [7]).

Like the New York Labor Law, the federal Fair Labor Standards Act (FLSA) defines “employ” to include “suffer or permit to work” (29 USC § 230 [g]), and it is well settled that “the test for determining whether an entity or person is an ‘employer’ under the New York Labor Law is the same test . . . for analyzing employer status under the Fair Labor Standards Act” (*Chu Chung v The New Silver Palace Rest., Inc.*, 272 F Supp 2d 314, 319 n6 [SDNY 2003]). In analyzing this definition of employment, the Supreme Court has observed that “[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame” (*United States v Rosenwasser*, 323 US 360, 362 [1945]).

Under this expansive definition of “employ,” an individual may be jointly employed by more than one individual or entity (*see* 29 CFR 791.2; *Rutherford Food Corp. v McComb*, 331 US 722 [1947]; *Zheng v Liberty Apparel Co., Inc.*, 355 F3d 61 [2d Cir 2003]). The factors to be considered to determine whether a general contractor is a joint employer of its subcontractor's employees are: (1) whether the general contractor's premises and equipment were used for the claimants' work; (2) whether the subcontractor had a business that could or did shift as a unit from one putative joint employer to another; (3) the extent to which the claimants performed a discrete line-job that was integral to the general contractor's process of production; (4) whether responsibility under the contract could pass from one subcontractor to another without material changes; (5) the degree to which the general contractor or its agents

supervised the claimants' work; and (6) whether the claimants worked exclusively or predominately for the general contractor (*Liberty Apparel supra* at 72). These particular factors are relevant because, when they weigh in the claimants' favor, they indicate that the general contractor has functional control over the subcontractor's workers, even in the absence of formal control (*Id.*).

We find, as discussed below, that Petitioners HOD and Ovadia have not produced sufficient evidence to prove that the Order finding them to be the claimants' employers was unreasonable or invalid.

- 1) *The claimants used HOD's premises and materials to complete their work*

Ovadia testified that HOD provided the materials used by the claimants on the project. Furthermore, HOD, as the general contractor, controlled the premises at 84-24 Lefferts where the claimants performed construction work

- 2) *Well Built had a business that could shift as a unit from one general contractor to another*

Well Built and Bruten had a business that could shift as a unit from one general contractor to another. Several of the claimants testified that they had worked for Bruten at other construction projects prior to starting work at 84-24 Lefferts, and that Ovadia was not present at those other projects.

- 3) *The claimants performed a discrete line job that was essential to HOD's*

Each subcontractor hired by HOD to work at the project performed a discrete line job that was essential to HOD's construction process. Ovadia testified that as the general contractor, he had no workers of his own, and therefore hired subcontractors to perform each phase of construction. He hired an electrical subcontractor, a plumbing contractor, a carpentry subcontractor, and other subcontractors as necessary to complete the work.

Ovadia hired Well Built to do brick and block work at the project. The claimants, therefore, performed a discrete line job that was essential to HOD's process of construction.

- 4) *There was not sufficient evidence to determine whether responsibility for the contract could pass from one subcontractor to another without material changes*

We do not know whether responsibility for the contract between HOD and Well Built could pass from one subcontractor to another without material changes. Ovadia alleges that upon learning that Bruten and Well Built had abandoned the job, he hired a new subcontractor with a different crew of workers to complete the brick and block work. However, several of the claimants testified that Anthony was still present after Bruten abandoned the job, and was indeed in charge, and that Ovadia had conversations at the job site with Anthony during that time period.

Ovadia, for his part, does not have a clear memory of Anthony's role at any time during the project which we find incredible in light of his own testimony that he was on site several times a day checking the progress of the work and the credible testimony of the claimants regarding Anthony's prominent role as a supervisor both subsequent and prior to Bruten's "disappearance." We find that the credible evidence establishes that after Bruten abandoned the job, Anthony continued to supervise the claimants at least until they were replaced by another crew of masons. Furthermore, Romulo Farez's testimony, although unclear, suggests that Anthony continued to supervise the new brick and block workers after Well Built's employees were dismissed. This raises unanswered questions as to whether a new subcontractor was actually hired or whether instead, Anthony simply stepped into Bruten's shoes under the original agreement with HOD. Ovadia, as the party bearing the burden of proof, failed to produce evidence of a new contract with a different subcontractor. Accordingly, we find that Petitioners HOD and Ovadia did not meet their burden of proof with respect to whether responsibility for the contract could pass from one subcontractor to another without material changes.

5) HOD supervised Bruten, Anthony and Well Built

Ovadia testified that he was the only individual from HOD to monitor the work at 84-24 Lefferts, and that he made frequent visits to the worksite to keep track of the work, but did not give directions or instructions to the claimants. The claimants corroborated Ovadia's testimony that he did not give them instructions. However, the claimants did testify that they were supervised by Bruten and Anthony who they observed frequently speaking to Ovadia. We find that because Ovadia was the only representative from HOD, the general contractor, present on site, that he gave instructions and supervision to Bruten and Anthony who in turn gave instructions and supervision to the claimants.

6) The claimants worked exclusively or predominately for HOD

During the time period that the claimants worked for Well Built at 84-24 Lefferts Blvd, they exclusively or predominately worked for HOD. The claimants worked full time or more, often six days per week, at the site; and there is no evidence that they worked for Well Built for other general contractors for any significant amount of time, if at all, during the time period covered by the Order. This indicates that the claimants were ultimately dependent on HOD and Ovadia for the terms and conditions of their employment because such employment was governed by the terms dictated by HOD to Well Built. This factor supports a finding of joint employment.

HOD and Ovadia are joint-employers of the claimants under Article 6 of the New York Labor Law

We find based on the totality of the circumstances, that the Commissioner's determination that HOD and Ovadia are employers under Article 6 of the Labor Law is reasonable and valid. HOD and Ovadia exercised functional control over the claimants sufficient for a finding of joint-employment. They provided the work site and materials used by the claimants to perform a discrete task essential to the entire construction process. Additionally, the claimants worked full time at the project for the duration of the time period covered by the Order including working at least six days after Ovadia knew they were not

being paid and should have known that Bruten and Well Built had abandoned the job. We affirm the Commissioner's determination that HOD and Ovadia are employers. We also affirm the Commissioner's calculation of the amount of wages due and owing to the claimants and note that those calculations were not contested by the Petitioners.

Civil Penalty

The Order assesses a civil penalty in the amount of \$48,619.00. The Board finds that the considerations and computations required to be made by the Commissioner in connection with the imposition of the civil penalty amount set forth in the Wage Order is proper and reasonable in all respects.

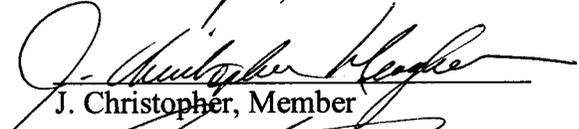
INTEREST

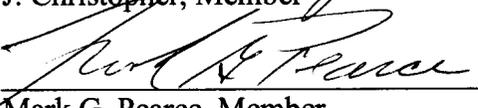
Labor Law § 219(1) provides that when the Commissioner determines that wages are due, then the order directing payment shall include "interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of payment. Banking Law section 14-A sets the "maximum rate of interest" at "sixteen percent per centum per annum."

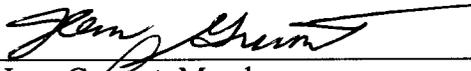
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

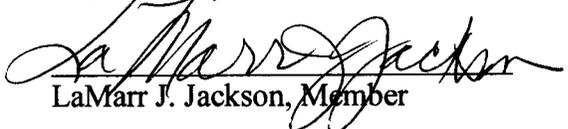
1. The Order is amended to strike from it the names "Akiva Emergi" and "Super Homes, Inc. d/b/a Superior Homes"; and
2. The Order is amended to substitute "Ovadia" for "Ovidia"; and
3. The Order is affirmed in all other respects; and
4. The Petition for Review be, and the same hereby is, denied.


Anne P. Stevason, Chairman


J. Christopher, Member


Mark G. Pearce, Member


Jean Grumet, Member


LaMarr J. Jackson, Member

Dated and signed in the Office of
the Industrial Board of Appeals,
at New York, New York, on
December 14, 2009.