

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JOSEPH L. MADDI, MD AND JOSEPH L. MADDI, :
PHYSICIAN, P.C., :

Petitioners, :

DOCKET NO. PR 10-301

To Review Under Section 101 of the Labor Law: :
Two Orders to Comply with Article 6 of the Labor :
Law and an Order Under Article 19 of the Labor Law, :
each dated September 20, 2010, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

John J. DelMonte, Esq., for the petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates of counsel), for respondent.

WHEREAS:

The petition for review in the above-captioned case was filed with the Industrial Board of Appeals (Board) on September 29, 2010, and subsequently amended on November 10, 2010. A second amended petition was filed on March 18, 2013. Upon notice to the parties a hearing was held on April 18, 2013 in Buffalo, New York, before LaMarr J. Jackson, Esq., Member of 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, and to make statements relevant to the issues.

The first order to comply with Article 6 (supplements order) under review was issued by the respondent Commissioner of Labor (Commissioner) on September 20, 2010 against the petitioners, and directs compliance with Article 6 and payment to the Commissioner for vacation pay due and owing to three named claimants in the amount of \$5,823.60 for the time period from June 1, 2006 through December 12, 2008, with interest continuing thereon at the rate of 16% calculated to the date of the order, in the amount of \$1,651.46, and assesses a 100% civil penalty in the amount of \$5,823.60, for a total amount due of \$13,298.66.

The second order to comply with Article 6 (wage order) under review directs compliance with Article 6 and payment to the Commissioner for wages due and owing to one named claimant in the amount of \$464.00 for the time period from October 25, 2008 to November 6, 2008, with interest continuing thereon at the rate of 16% calculated to the date of the supplements order, in the amount of \$138.92, and assesses a 100% civil penalty in the amount of \$464.00, for a total amount due of \$1,066.92.

The order under Article 19 of the Labor Law (penalty order) imposes a \$500.00 civil penalty against the petitioners for violating Labor Law § 661 and 12 NYCRR 142-2.6 for failing to keep and/or furnish true and accurate payroll records for each employee from on or about June 1, 2006 through December 12, 2008.

By letter dated April 17, 2013, the eve of hearing, counsel for the petitioners advised the Board that the petitioners were debtors engaged in pending bankruptcy proceedings under Chapters 7 and 11, claimed that the continuation of the proceedings before the Board violated the automatic stay provisions set forth in the Bankruptcy Code (see 11 USC § 362 [b] [4]), requested that the hearing be adjourned and stayed, and that in the event the hearing proceeds that the legal issues raised in the second amended petition be deemed as submitted for a determination as a matter of law¹. The Board denied the petitioners' request for an adjournment by letter faxed to the parties on April 17, 2013. Such letter explained the Board's position that the automatic stay does not apply to proceedings before the Board (*see Matter of Gregory Kerber et al.*, Docket No. PR 08-170 [interim decision, October 21, 2009]).

At hearing, counsel for the petitioners moved for the proceeding before the Board to be stayed pursuant to 11 USC § 362, then rested without presenting any witnesses. The respondent moved to dismiss the petition because the petitioners had failed to meet their burden of proof. For the following reasons, we deny the petitioners' motion for the proceeding before the Board to be stayed and grant the respondent's motion to dismiss the petition.

As we stated in our interim decision in *Matter of Kerber*, the automatic stay provision of the Bankruptcy Code does not preclude the Board from deciding petitioners' appeal. Accordingly, the petitioners' motion to stay the proceeding is denied. The petitioners presented no evidence at the hearing, and, therefore failed to meet their burden to show that the orders are invalid or unreasonable (Labor Law § 101, 103; 12 NYCRR 65.30). Therefore, the petition is dismissed.

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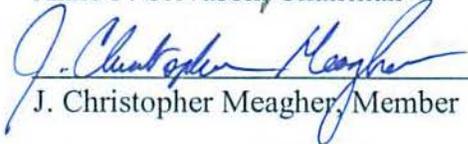
¹ There is no provision in the Board's Rules that provide for legal issues raised to be deemed submitted absent a stipulation of facts.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

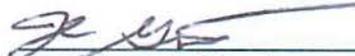
This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.



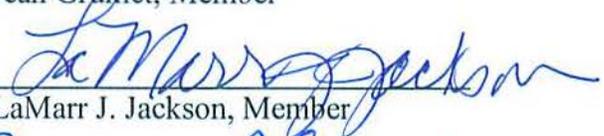
Anne P. Stevason, Chairman



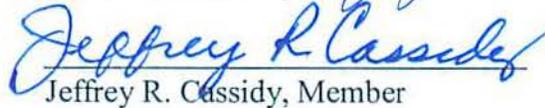
J. Christopher Meagher, Member



Jean Grunnet, Member



LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
February 27, 2014.