

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 SEOK H. PAK and TOTOWA TRADING, INC., :
 (T/A CRYSTAL'S CLOTHING STORE), :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply with Article 19 of the Labor :
 Law, dated December 6, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 11-024
 Order to Comply No. 10-01296

INTERIM
RESOLUTION OF DECISION

APPEARANCES

Samuel S. H. Ahne, Esq., for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Jeffrey G. Shapiro of Counsel, for Respondent.

WHEREAS:

The above proceeding was commenced on February 2, 2011, when Petitioners Seok H. Pak and Totowa Trading, Inc., (T/A Crystal's Clothing Store) (Petitioners) filed a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (12 NYCRR Part 66).

Petitioners sought the Board's review of an Order to Comply dated December 6, 2010 (Order #1). The page of Order #1 that states Respondent's findings shows that there is due \$83,990.97 in wages, \$30,631.50 in interest, and \$83,990.97 in a civil penalty, for a total of \$198,613.44 found due. The Schedule to Order #1 lists the names of two employee/claimants; together the sum of wages due to them is \$73,907.49, or \$10,083.48 less than the total amount of wages found due on the page of Order #1 with Respondent's findings.

On March 23, 2011, the parties filed a stipulation of revised order to comply (stipulation) and a proposed Amended and Reissued Order to Comply dated February 28, 2011 (Order # 2). The Schedule annexed to Order #2 is identical to the Schedule annexed to Order #1 except for its date and that it includes the name of a third employee/claimant and wages owed to her in the amount of \$10,083.48. The interest assessed in Order #2 is \$42,409.82, an amount higher than the interest assessed in Order #1, apparently reflecting additional interest that accrued between December 2010 and February 28, 2011.

By the stipulation, the parties consent and stipulate to the withdrawal of Order #1 and to its amendment and reissuance as Order #2. The Board approves the addition of a third employee/claimant's name to the Schedule along with the amount that is found due her as these additions do not change the total amount found due in Order #1. However, the Board finds it unfair to charge Petitioners for interest that accrued during the time it took to correct what appears to have been an avoidable mistake that should have been caught before Order #1 was issued. Correcting such a mistake at this juncture protracts case processing time before the Board, and Petitioners should not be penalized for this added time. Accordingly, the Board approves the withdrawal of the December 6, 2010 Order and its amendment and reissuance as discussed above, effective the date of this decision, but suspends the interest that accrued between December 6, 2010 and the date of this decision.

The Board acknowledges that Petitioners have indicated that they will rely on their earlier filed petition and the claims raised therein as the basis for review of Order #2 and that Respondent has filed an answer to the petition.

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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

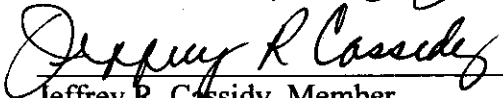
1. The parties' stipulation, agreeing and consenting to Respondent's withdrawal of the Order to Comply with Labor Law article 19 against Petitioners Seok H. Pak and Totowa Trading, Inc., dated December 6, 2010, Respondent's amendment of the Order to Comply to add to the Schedule the name of a third employee/claimant and the amount of \$10,083.48 in wages due her, and Respondent's reissuance on February 28, 2011 of the amended Order to Comply, be and the same hereby is approved, except that interest is suspended from December 6, 2010, to the date of this decision; and
2. Respondent shall serve on the Petitioners and simultaneously file with the Board an Order to Comply that conforms with this Interim Resolution of Decision; and
3. Upon Respondent's filing of a revised Order to Comply in accordance with this Interim Resolution of Decision, this matter will be processed further based on the petition and answer that have already been filed with the Board and in accordance with the Board's Rules of Procedure and Practice.



Anne P. Stevason, Chairman

J. Christopher Meagher, Member

Jean Grumet, 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
June 7, 2011.