

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JASON ELLIS AND CAKES BY JAY, INC., :

Petitioners, :

To Review Under Section 101 of the Labor Law: :  
An Order to Comply With Article 6 of the Labor Law, :  
an Order to Comply With Article 19 of the Labor Law, :  
and an Order Under Articles 5, 6, and 19 of the Labor :  
Law, each dated June 27, 2011, :

DOCKET NO. PR 11-245

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :  
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**APPEARANCES**

Jason Ellis, petitioner pro se, and for Cakes By Jake, Inc.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Michael Paglialonga of counsel), for respondent.

**WHEREAS:**

The petition for review in the above-captioned case was filed with the Industrial Board of Appeals (Board) on July 29, 2011. The petition seeks review of three orders issued by the respondent Commissioner of Labor (Commissioner) against the petitioners on June 27, 2011. The order to comply with Article 6 of the Labor Law (wage order) finds that the petitioners failed to pay wages to a named claimant and directs payment of \$670.50 in wages due and owing, together with interest in the amount of \$308.91, and a civil penalty in the amount of \$670.50, for a total amount due and owing of \$1,649.91. The order to comply with Article 19 of the Labor Law (minimum wage order) finds that the petitioners failed to pay minimum wages to the same named claimant and directs payment of \$1,574,25 in minimum wages, together with interest in the amount of \$715.62, and a civil penalty in the amount of \$1,574,25, for a total amount due and owing of \$3,864.12. The order under Articles 5, 6, and 19 (penalty order) finds that the petitioners violated Labor Law § 191 (a)

by failing to pay wages weekly to manual workers not later than seven calendar days after the end of the week in which the wages were earned; made deductions from employee's wages in violation of Labor Law § 193; failed to give each employee a complete wage statement with each payment of wages in violation of Labor Law § 661; failed to provide required meal periods in violation of Labor Law § 162; and failed to keep and/or furnish true and accurate payroll records for each employee; and directs payment of a total civil penalty of \$1,050.00 for such violations.

The petition does not dispute any of the findings contained in the orders, instead alleging that "Cakes By Jay filed bankruptcy on June 1, 2009. Premises of the store were surrendered back to landlord. All assets were liquidated and bank accounts closed." The respondent filed a motion to dismiss the petition for failing to state a cause of action upon which relief may be granted, which the petitioners did not oppose despite requesting additional time to do so. For the following reasons, we grant the respondent's motion to dismiss.

At the outset, we note that a lack of adequate funds does not excuse failure to comply with the law, nor does surrendering the premises of a store back to a landlord or liquidating assets and closing bank accounts relieve an employer from its obligations under the Labor Law. The petition does not deny that the claimant is owed wages, that unlawful deductions were made from her wages, that a required meal period was not provided, that payroll records were not maintained, that wages statements were not provided, and that wages were not paid weekly. We find as a matter of law that objecting to the orders on the grounds that the premises of the store was surrendered back to the landlord, all assets were liquidated, and bank account closed, does not state a claim that the orders under review are unreasonable or invalid.

With respect to the bankruptcy issue, we held in *Matter of Kerber and World Media, Inc.*, Docket No. PR 08-170 (October 21, 2009), that the existence of a bankruptcy proceeding has no bearing on the reasonableness and validity of orders issued by the Commissioner, but is only relevant to their eventual enforcement. Accordingly, the petition must be dismissed for failing to state a cause of action upon which relief may be granted.

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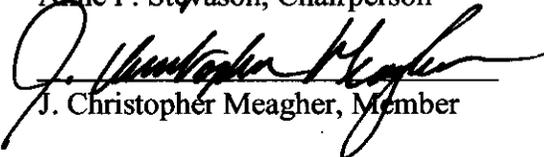
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**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

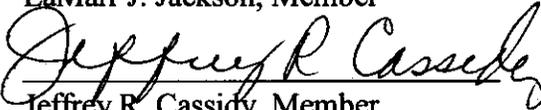
This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.

  
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Anne P. Stewason, Chairperson

  
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J. Christopher Meagher, Member

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Jean Grumet, Member

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LaMarr J. Jackson, Member

  
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Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
January 30, 2012.