STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petitions of: TATIANA BALLAKIS AND CARPIO ORGANIZATION, INC. (T/A CAPRICE CAFÉ), DOCKET NO. PR 15-334, SARANTIS BALLAKIS, DOCKET NO. PR 15-335, Petitioners, To Review Under Section 101 of the Labor Law: An Order to Comply with Article 6 and an Order under Article 19 of the Labor Law, both dated August 18, 2015, and - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NOS. PR 15-334 and PR 15-335 RESOLUTION OF DECISION

APPEARANCES

Sarantis Ballakis, petitioner pro se, and for Tatiana Ballakis and Carpio Organization, Inc.

Pico P. Ben-Amotz, General Counsel, NYS Department of Labor (John-Raphael Pichardo of counsel), for respondent.

WITNESSES

Sarantis Ballakis, for petitioners.

Marian Znak, Lillian Carpio, and Senior Labor Standards Investigator Joseph Ryan, for respondent.

WHEREAS:

On October 18, 2015, Tatiana Ballakis (Ms. Ballakis) and Carpio Organization, Inc. (T/A Caprice Café) (Caprice) filed a petition with the Industrial Board of Appeals (Board) seeking review of two orders issued by the Commissioner of Labor (Commissioner) on August 18, 2015 against Ms. Ballakis, Caprice, and Sarantis Ballakis (Mr. Ballakis). This petition was given docket number PR 15-334. Ms. Ballakis alleged that claimant Marian Znak was never employed by her or by Caprice after she purchased the company's stock on August 29, 2014.

On October 18 2015, Mr. Ballakis filed a petition with the Board seeking review of the same two orders. His petition was given docket number PR 15-335. Mr. Ballakis alleged that he is not an owner of the business, or Znak's employer. All petitioners contested the civil penalties and liquidated damages imposed in the orders. The Board consolidated both cases for hearing pursuant to Board Rule 65.44 (12 NYCRR 65.44) with the consent of all parties. Respondent filed her answers on December 9, 2015.

The order to comply with Article 6 of the Labor Law (wage order) directs payment to the Commissioner in the amount of $887.50 for wages due and owing to Znak for the period from October 20, 2014 to October 28, 2014, with interest continuing thereon at the rate of 16% calculated to the date of the order in the amount of $114.38, 25% liquidated damages in the amount of $221.88, and a 100% civil penalty in the amount of $887.50, for a total amount of $2,111.26 due under the wage order. The order under Article 19 of the Labor Law (penalty order) imposes a $500.00 civil penalty for violating Labor Law § 661 as supplemented by 12 NYCRR 146-2.1 by failing to keep and/or furnish true and accurate payroll records for each employee for the period from on or about October 20, 2014 through October 28, 2014.

Upon notice to the parties a hearing was held on March 11, 2016 in New York, New York, before Administrative Law Judge Jean Grumet, Esq., 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 arguments.

PETITIONERS' MOTION TO ADJOURN THE HEARING IS DENIED

At the start of the hearing, Mr. Ballakis requested that the hearing be adjourned because (1) Ms. Ballakis was seven months pregnant and Mr. Ballakis "did not allow her" to appear at the hearing fearing it would jeopardize the pregnancy; (2) petitioners' attorney, who never filed a notice of appearance, did not appear at the hearing; and (3) petitioners were not able to attend the hearing because of the Easter holiday.[1] The hearing officer stated that she would grant an adjournment of the hearing if petitioners' attorney filed a Notice of Appearance, but stated that Mr. Ballakis' motion to adjourn would be denied on the other two grounds because no request for an adjournment due to Ms. Ballakis' pregnancy or the Easter holiday was made at the February 8, 2016 pre-hearing conference or at any time prior to the hearing. The hearing officer gave Mr. Ballakis the opportunity to call the attorney, but Mr. Ballakis provided no proof that an attorney was retained and no Notice of Appearance was filed by an attorney with the Board. Mr. Ballakis was directed to go forward with the hearing as a pro se petitioner.

We affirm the hearing officer's ruling. Board Rule 65.23 states that postponement of a hearing ordinarily will not be allowed except in the case of an emergency or unusual circumstances unless the Board receives a request for an adjournment in writing at least seven days before the hearing. Petitioners did not request an adjournment of the hearing prior to the hearing, nor did they present any emergency or unusual circumstance to warrant an adjournment of this matter.

[1] The Board takes administrative notice of the fact that Easter occurred on March 27, 2016, and Greek Orthodox Easter occurred on May 1, 2016. The hearing in this matter took place on March 11, 2016.

RESPONDENT'S MOTIONS TO DISMISS ARE DENIED

At the start of the hearing, the Commissioner made a motion to dismiss the petition filed by Ms. Ballakis on the basis that she had defaulted by failing to appear at the hearing. The hearing officer reserved judgment on the motion and asked Mr. Ballakis to proceed putting in his case. We deny the Commissioner's default motion. As discussed below, even without Ms. Ballakis' testimony, we find based on the testimony of Mr. Ballakis and the claimant that a prima facie case was established that Ms. Ballakis was not an employer within the meaning of the Labor Law and we revoke the order as to Ms. Ballakis' individual liability.

At the close of petitioners' case, the Commissioner made a motion to dismiss petitioners' cases for failure to establish a prima facie case. The hearing officer withheld ruling on the motion, and asked respondent to proceed putting in her case. Because petitioners have the burden of proof, we consider only the evidence presented by petitioners when deciding a motion to dismiss made at the closing of petitioners' evidence (*Matter of Jay Metz et al.,* PR 09-390 [June 4, 2012]; *Public Employees Federation [Benson] v New York State Public Employment Relations Board,* 288 AD2d 542, 543 [2001]). We deny the motion because petitioners raised issues of fact at the hearing, which the Board must resolve in determining whether to affirm, modify or revoke the orders.

SUMMARY OF EVIDENCE

Testimony of Petitioner Sarantis Ballakis

On August 29, 2014, Ms. Ballakis purchased the Carpio Organization, which operates the Caprice Cafe, a small café located inside an office building in New York City. The café had counter service only. Ms. Ballakis was the manager and owner of the café and made all decisions. Mr. Ballakis was not an owner, did not make any decisions regarding the café, and was only a part time employee working a few hours per day serving customers or buying needed supplies to help out his wife. On August 29, 2014, Ms. Ballakis spoke to Znak, who had worked at the café for a year under the prior management, but Ms. Ballakis and Znak did not agree about financial terms and Znak refused to provide identification, refused to fill out an application, and never worked at the café after August 29, 2014.

When Ms. Ballakis first began operating the café, "we had also a different employee for a few hours who helped us out because we didn't know this business." That employee, whose name Ms. Ballakis does not remember, worked for four hours two or three days per week. "When we learned the business" the person stopped working. The cafe's business hours were 6:30 a.m. to 6:30 p.m. Ms. Ballakis opened the café in the morning and closed it in the evening. Ms. Ballakis scheduled the only other employee's hours a week in advance, and paid him. Ms. Ballakis was the manager of the business, and Mr. Ballakis had no authority to direct the other employee.

When Ms. Ballakis opened at 6:30 a.m., she began spreading cream cheese or butter on bagels and wrapping them in saran wrap for later purchase by customers. Coffee was made by whoever was there at the moment, whether it was Ms. Ballakis, Mr. Ballakis or the helper. Ms. Ballakis cooked eggs in the microwave and made sandwiches and salads for lunch. Pastries were bought wholesale from an outside supplier. The café's busiest hours were from 8:00 a.m. until 10:00 a.m. and 12:00 noon until 2:00 p.m. Mr. Ballakis worked during the slow hours, when there

were few customers, making coffee and "the light stuff." He rarely made sandwiches. Deliveries were made by the unnamed helper. If the helper was not present, customers, all of whom worked in the building, were told to come downstairs to pick up their orders.

Testimony of Lillian Carpio

Lillian Carpio and her husband were the owners of the café for about two years and sold the business to Ms. Ballakis on August 29, 2014. Carpio had retained Mr. Ballakis, who is a real estate broker, to sell it within a six-month period, and when that period was going to expire Mr. Ballakis decided to buy the company himself. The only time Carpio and Ms. Ballakis met was at the closing of the real estate transaction. At the time of the sale, Znak was Carpio's and her husband's sole employee. Carpio had hired Znak through an on-line advertisement and they later became friends.

After selling the business, Carpio visited the café on three occasions, each time at 10:00 or 11:00 a.m., because Mr. Ballakis texted her that the Carpios still owed money for some unpaid bills and she went to reimburse him. During a visit to the café at the end of September 2014, Carpio saw Mr. Ballakis and Znak, who was working at the cash register selling food and charging customers. Towards the end of October, "like in [the] twenties," she again saw Mr. Ballakis and Znak, who was at the register taking customer orders and payments. When Carpio visited on November 10, 2014, Mr. Ballakis told her that Znak had been fired a week earlier. A woman who Carpio did not know was doing Znak's job. Carpio did not see Ms. Ballakis on any of these visits. Znak was wearing an apron when she visited in September and October, and his food preparation license from the New York Department of Health was posted.

Testimony of claimant Marian Znak

Claimant Marian Znak was employed by the Carpio Organization for more than a year when it was owned by Carpio, and thereafter by petitioners from August 29, 2014 to October 28, 2014. During the relevant period, Znak had the same duties as before the sale. He served and accepted money from customers; made sandwiches, salads and coffee; set up the store in the morning and closed it in the evening; and cleaned. Znak had a key to the café, opened it each morning at 7:00 a.m. and finished work around 5:00 or 5:30 p.m. when the café closed for the day. Sometimes it took longer for Znak to clean up and he finished work at 6:00 p.m. Mr. Ballakis arrived at 9:00 or 10:00 a.m. and worked at the café for the rest of the day. The restaurant was busiest at 8:00 a.m., when Znak was either by himself or Mr. Ballakis came in early to help him. Mr. Ballakis worked almost every day; Ms. Ballakis came to the café sporadically. When Mr. Ballakis did not come to work, Ms. Ballakis worked in his place, and she was sometimes there at the end of the day or in the morning, but Znak would never know in advance.

When the sale of the café took place on Friday, August 29, 2014, Mr. Ballakis told Znak to continue working the following Monday, which he did. Znak was never asked to fill out an application, and only provided his name. After the sale of the café, Mr. Ballakis was the manager, and he told Znak that he was going to keep Znak's conditions of employment the same as they were under the previous owners. Mr. Ballakis told Znak that his schedule was Monday through Friday from 7:00 a.m. to 5:00 p.m. Mr. Ballakis paid Znak $500.00 per week in cash on Fridays, the same wage he had earned from Carpio. Ms. Ballakis did not tell Znak his hours, nor did she

ever pay him. While Znak generally knew how to do his job, Mr. Ballakis sometimes told him what to do.

When Znak asked for his weekly pay on Friday, October 24, 2014, Mr. Ballakis told him that he would pay him on Monday. Znak worked the following Monday but when he again asked Mr. Ballakis for his pay, Mr. Ballakis told him that he did not have the money but would pay him the following day. On Tuesday, October 28, 2014, Mr. Ballakis "said that's the last day, just give me the key and get your stuff. Give me the key from the store and I have to fire you."

Znak identified the claim for unpaid wages that he filed with DOL. After filing the claim, in response to the DOL investigator's request, he obtained statements from 19 of the café's customers to prove that he had been working during the relevant period. The statements were signed in November 2014, when Znak again went to the café to ask Mr. Ballakis to pay him. The customers provided the statements to him after work at 5:00 or 6:00 p.m.

Testimony of Senior Labor Standards Investigator Joseph Ryan

Senior Labor Standards Investigator Joseph Ryan investigated Znak's claim and entered the DOL investigative file into the record. In a December 23, 2015 letter, Ms. Ballakis told the DOL that she met with Znak on August 29, 2014, but he was never hired to work at Caprice. After receiving this letter Ryan wrote to Znak and asked him to provide DOL with witness statements indicating that he was working at the café during the relevant period.

The petitioners did not provide records, so Ryan based his computation of unpaid wages on Znak's claim. Ryan computed Znak's unpaid wages for the week of October 20 through 24, 2014 based on his having had a $500.00-per-week wage and worked 50 hours that week. After computing an hourly wage – $12.50 – by dividing $500.00 by 40, Ryan calculated that Znak was also owed ten hours of overtime pay at a time and a half his regular wage rate, for a total of $687.50 for the week. For the two days Znak worked the following week, Ryan computed that Znak was owed an additional $200.00 for 20 hours, for a total of $887.50 in wages due and owing.

STANDARD OF REVIEW AND BURDEN OF PROOF

When a petition is filed, the Board reviews whether an order issued by the Commissioner is "valid and reasonable" (Labor Law § 101 [1]). A petition must state "in what respects [the order on review] is claimed to be invalid or unreasonable," and any objections not raised shall be deemed waived (Labor Law § 101 [2]). The Labor Law provides that an order of the Commissioner shall be presumed valid (Labor Law § 103 [1]). The hearing before the Board is *de novo* (Board Rules of Procedure and Practice [Board Rules] 66.1 [c], 12 NYCRR 66.1 [c]), and if the Board finds based on that hearing that the order or any part thereof is invalid or unreasonable, the Board is empowered to affirm, revoke or modify the order (Labor Law § 101 [3]). Since the hearing before the Board is *de novo*, we must consider the testimony and evidence at hearing in making our determination. (*Matter of Zi Qi Chan and Jason Tong and Henry Foods, Inc.*, PR 10-060 [March 20, 2013]). Petitioners have the burden to prove by a preponderance of the evidence that the orders are not valid or reasonable (Board Rule 65.30 [12 NYCRR 65.30]; State Administrative Procedure Act § 306; *Matter of Angello v Natl. Fin. Corp.*, 1 AD 3d 850, 854 [3d Dept 2003]).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Claimant Was An Employee and Entitled to Earned Wages

Petitioners alleged that Znak was not employed after August 29, 2014 when Caprice changed owners.

Labor Law § 190 (2) defines "employee" for purposes of Article 6 of the Labor Law as "any person employed for hire by an employer in any employment." To be "employed" means that a person is "permitted or suffered to work" (Labor Law § 2 [7]). Znak credibly testified that on August 29, 2014, he was instructed by Mr. Ballakis to continue working on the same terms and for the same wage as previously. Carpio corroborated Znak's testimony that he continued to work at the café after the sale, credibly testifying that she saw Znak working the cash register at the café on two occasions, at the end of September and in late October, and was told by Mr. Ballakis on November 10, 2014 that Znak had been fired the week before.

We credit Znak's and Carpio's detailed and consistent testimony over petitioners' claim that since Ms. Ballakis and Znak supposedly "did not agree about the financial part" and Znak refused to fill out an application, petitioners hired a different person whose name Ms. Ballakis does not remember to work "a few hours" two or three days per week "because we didn't know this business." As discussed below, Mr. Ballakis' credibility is further undermined by his testimony concerning his own role at the café. Based on the credible testimony of Znak and Carpio, we find that Znak was an employee who was suffered or permitted to work by Caprice and, as discussed below, Mr. Ballakis, throughout the relevant period.

Petitioner Sarantis Ballakis Was An Employer Under the Labor Law

Mr. Ballakis' petition alleges that he was not an owner of the business nor Znak's employer. Labor Law § 190 (3) defines "employer" for purposes of Article 6 of the Labor Law as including "any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service." Labor Law § 2 (6) defines "employer" to include "the person employing" a worker, "whether the owner, proprietor, agent, superintendent, foreman or other subordinate." Like the New York Labor Law, the federal Fair Labor Standards Act (FLSA) defines "employ" to include "suffer or permit to work" (29 USC § 203 [g]), and "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" (*Chung v The New Silver Palace Rest., Inc.*, 272 FSupp2d 314, 319 n6 [SDNY 2003]); *Bonito v Avalon Partners, Inc.*, 106 AD3d 625, 626 [1st Dept 2013]; *Cohen v Finz & Finz, P.C.*, 131 AD3d 666 [2d Dept 2015]).

In *Herman v RSR Sec. Servs. Ltd.*, 172 F3d 132, 139 [2d Cir 1999], the Second Circuit Court of Appeals explained the test used for determining employer status:

> "[T]he overarching concern is whether the alleged employer possessed the power to control the workers in question with an eye

> to the 'economic reality' presented by the facts of each case. Under the 'economic reality' test, the relevant factors include whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records" (internal quotations and citations omitted).

No one of these factors is dispositive; the purpose of examining them is to determine economic reality based on a "totality of circumstances" (*Id.*). Under the broad New York and FLSA definitions of "employer," more than one person or entity can be found to be an employee's employer. *(Zheng v. Liberty Apparel Co.*, 355 F3d 61 [2d Cir 2003]; *Matter of Petula Gianopoulos Sikiotis*, PR 11-186 [September 24, 2014]; *Matter of Robert Lovinger and Miriam Lovinger and Edge Solutions, Inc.*, PR 08-059 [Mar. 24, 2010]). An individual who meets the statutory test based on such factors as having hired and fired employees, supervised and controlled employees' work schedules and determined the method and rate of pay can be personally liable as an employer under Article 6 of the Labor Law (*Bonito v Avalon Partners, Inc.*, 106 AD3d at 626). Under Labor Law § 2 (6), the term "employer" is not limited to the owners or proprietors of a business, but also includes any agents, managers, supervisors and subordinates, as well as any other person or entity acting in such capacity if they possess the requisite authority over employees (*Matter of Ira Holm and RSI Inc. and Midland Ave. Corp.*, PR 08-025 [December 17, 2008]; *Matter of Petula Gianopoulos Sikiotis*, PR 11-186 [September 24, 2014]). Under these standards, Mr. Ballakis' assertion that his wife, not he, owned Caprice is not dispositive with respect to his status as an employer under the Labor Law.

Mr. Ballakis' testimony that his wife managed the café on a day to day basis and made all decisions was undermined by Znak's credible contrary testimony that Mr. Ballakis: (1) told Znak to continue working after the August 29, 2014 sale; (2) told Znak his schedule; (3) paid Znak (and refused to do so during the relevant period); (4) gave Znak instructions when necessary; (5) managed the café on a day-to-day basis; and (6) fired Znak on October 28, 2014. Carpio's testimony that Mr. Ballakis decided to buy Caprice, that she dealt exclusively with Mr. Ballakis, and only met Ms. Ballakis at the August 29, 2014, closing further belies his claim to have been just a part-time helper whose wife made all significant decisions. Indeed, Mr. Ballakis himself often referred to what "we" did: for example, that "we fix the schedule and we say this day you [an employee] are going to come these hours," or that until "we learned the business," "we had also a different employee . . . because we didn't know this business." The evidence that Mr. Ballakis hired and fired Znak, told Znak his schedule, paid and supervised Znak, and decided on the purchase of Caprice, demonstrates that Mr. Ballakis was the café's manager throughout the relevant period, and the person in overall control on a day-to-day basis.

Based on the facts established by the record and applicable law, it was reasonable and valid to deem Mr. Ballakis to be Znak's employer because he had the power to hire and fire employees, supervised and controlled employee work schedules or conditions of employment, and determined the rate and method of payment. We find that as a matter of economic reality, Mr. Ballakis was Znak's employer during the relevant time period.

Ms. Ballakis was Not an Employer

The petition filed by Ms. Ballakis and Caprice also alleges that Znak was never employed by Ms. Ballakis. In contrast to the evidence discussed above concerning her husband, there is no reasonable or valid basis for finding Ms. Ballakis an employer under the Labor Law on the record before us. Znak testified that Ms. Ballakis came to the café sporadically, never paid or supervised him, gave him no instructions, and did not hire or fire him. The orders are revoked with respect to Ms. Ballakis.

The Wage Order is Affirmed as to Petitioners Ballakis and Caprice

The Labor Law requires employers to maintain payroll records that include, among other things, employees' daily and weekly hours worked, wage rate, and gross and net wages paid (Labor Law § 195 and 12 NYCRR 146-2.1). Employers are required to keep such records open to inspection by the Commissioner or a designated representative for at least six years.

As the Appellate Division stated in *Matter of Mid-Hudson Pam Corp v Hartnett*, 156 AD2d 818, 821 (3rd Dept 1989), "[w]hen an employer fails to keep accurate records as required by statute, the Commissioner is permitted to calculate back wages due to employees by using the best available evidence and to shift the burden of negating the reasonableness of the Commissioner's calculations to the employer." (*See* Labor Law § 196-a; *Angello v National Finance Corp.*, 1AD3d 850 [3d Dept 2003]).

In *Anderson v Mt. Clemens Pottery Co.*, 328 US 680, 687-88 [1949], superseded on other grounds by statute, the U.S. Supreme Court opined that a court may award damages to an employee, "even though the result be only approximate . . . [and] [t]he employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the [recordkeeping] requirements of . . . the Act" (*Id.* at 688-89). New York courts following *Mt. Clemens Pottery Co.* have consistently held that when only incomplete or unreliable wage and hour records are available, DOL is "entitle[d] to make just and reasonable inferences and use other evidence to establish the amount of underpayments, even though the results may be approximate" (*Hy-Tech Coatings v New York State Dept. of Labor*, 226 AD2d 378, [1st Dept 1996], citing *Matter of Mid-Hudson Pam Corp. v Hartnett*, 156 AD2d 818, 821 [3d Dept 1989]; see also *Matter of Bae v Industrial Board of Appeals*, 104 AD3d 571 [1st Dept 2013]; *Matter of Ramirez v Commissioner of Labor*, 110 AD3d 901 [2d Dept 2013]). Wages may be found due even if based on an estimate of hours (*Reich v Southern New England Telecommunications Corp.*, 121 F.3d 58, 70 [2d Cir 1997] [finding no error in damages that "might have been somewhat generous" but were reasonable in light of the evidence and "the difficulty of precisely determining damages when the employer has failed to keep adequate records"]).

Mr. Ballakis did not provide payroll records to DOL during the investigation or produce records at hearing, and maintained that Znak was never an employee. Given the lack of specificity and the inconsistencies in Mr. Ballakis' testimony, we find that it was simply too contradictory and conclusory to overcome the presumption favoring the Commissioner's order and meet petitioner's burden. Petitioner cannot shift his burden to DOL with arguments, conjecture or incomplete, general and conclusory testimony (*Matter of Young Hee Oh,* PR 11-017 [May 22, 2014]; *Matter of Angela Jay Masonry & Concrete, Inc.,* PR 06-073 [September 24, 2008]). In the

absence of contemporaneous payroll records, an accurate estimate of hours worked and wages paid, or other credible evidence showing the Commissioner's estimates, even if imprecise, to be invalid or unreasonable, the orders must be upheld.

We find that it was reasonable and valid for the Commissioner to find that Znak was owed unpaid wages by Mr. Ballakis and Caprice and to calculate his unpaid wages based on his claim, which was corroborated by his credible testimony.

The Civil Penalties in the Wage and Penalty Orders Are Affirmed

The wage order assessed a civil penalty in the amount of 100% of the wages due. Petitioners offered no evidence to contest the basis for this penalty and the Board finds that the considerations and computations that the Commissioner was required to make in connection with the imposition of the civil penalty amount set forth in the wage order are proper and reasonable in all respects. The penalty order's civil penalty of $500.00 for failure to keep required payroll records was uncontested by petitioners, who provided no payroll records, and is deemed reasonable and valid.

Liquidated Damages

The wage order assessed liquidated damages in the amount of 25% of the underpaid wages. Labor Law § 198 (1-a) states that when an employee is underpaid, the commissioner shall assess the employer the full amount of any such underpayment, and an additional amount as liquidated damages calculated by the commissioner as an amount no more than 100% of the unpaid wages found to be due unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law. Petitioners offered no evidence to prove that they had a good faith basis to believe that their underpayment was in compliance with the law. We therefore affirm the imposition of 25% liquidated damages in the wage order.

Interest

Labor Law § 219 [1] provides that when the Commissioner determines that wages are due, the order directing payment shall include "interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of payment. Banking Law § 14-a sets the "maximum rate of interest" at "sixteen per centum per annum." Petitioners offered no evidence to contest the imposition of interest. Accordingly, we find the interest assessed in the wage order valid and we affirm it.

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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage and penalty orders are revoked with respect Tatiana Ballakis, and are otherwise affirmed.

2. The petitions for review be, and the same hereby are, granted in part and denied in part.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York, on
September 14, 2016.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage and penalty orders are revoked with respect Tatiana Ballakis, and are otherwise affirmed.

2. The petitions for review be, and the same hereby are, granted in part and denied in part.

Vilda Vera Mayuga, Chairperson

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Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Syracuse, New York, on
September 14, 2016.