STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:	:	
AHMAD A. HUSSEIN T/A ALYAS HOME IMPROVEMENT,	:	
Petitioner,	:	DOCKET NO. PR 18-016
To Review Under Section 101 of the Labor Law: An Order to Comply with Article 19 of the New York State Labor Law, dated January 18, 2018,	:	RESOLUTION OF DECISION
- against -	:	
THE COMMISSIONER OF LABOR,	:	
Respondent.	:	

APPEARANCES

Ahmad A. Hussein, petitioner pro se.

Pico P. Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Kevin E. Jones* of counsel), for respondent.

WITNESSES

Ahmad A. Hussein and Anan Hussein, for petitioner.

Senior Labor Standards Investigator Shaun Abrilz and Gerson Venites, for respondent.

WHEREAS:

On March 16, 2018, petitioner Ahmad A. Hussein (hereinafter "Hussein") filed a petition for review of an order issued against him by respondent Commissioner of Labor (hereinafter "Commissioner" or "DOL") on January 18, 2018. Respondent filed her answer on June 7, 2018.

Upon notice to the parties, a hearing was held on September 7, 2018 in White Plains, New York, before Administrative Law Judge Jean Grumet, 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 order under review (hereinafter "order") is an order to comply with Article 19 of the New York State Labor Law and directed the petitioner to pay $17,998.12 in wages owed to three

claimants for the period from December 12, 2015 to January 9, 2016, together with interest at 16% per annum calculated to the date of the order in the amount of $5,854.07, 100% liquidated damages in the amount of $17,998.12, and a 200% civil penalty of $35,996.24. In addition, the order imposed a civil penalty of $1,000.00 for violating Labor Law § 661 and Department of Labor Regulations (12 NYCRR) § 142-2.6 by failing to keep and/or furnish true and accurate payroll records for each employee for the period from July 8, 2015 through January 1, 2016, for a grand total of $78,846.55 owed as of the date of the order.

The petition alleges that the order is invalid because the three claimants were not employed by Hussein on the dates in the order, and that the petitioner made a final payment to the claimants on December 17, 2015 for their part-time work over the previous weeks. The petition also challenges the civil penalties and liquidated damages assessed in the order. For the reasons set forth below we modify the order and affirm the order as modified.

SUMMARY OF EVIDENCE

Petitioner's Evidence

Testimony of Petitioner Ahmad A. Hussein

Beginning in September 2015, Hussein operated a small home improvement business which employed sometimes three and sometimes four employees who worked at various projects throughout Westchester County. Hussein employed the three claimants, Jairo Sosa Caceres (hereinafter "Caceres"), Luis Rodriguez (hereinafter "Rodriguez"), and Gerson Venites (hereinafter "Venites"), until December 17, 2015.

Hussein paid Caceres and Venites $130.00 per day and Rodriguez (who was more skilled) $190.00 per day for a work day that could last four hours or eight hours, although according to Hussein, the claimants never worked a full eight hours. From September 20 or 26, 2015 until December 17, 2015, when he fired the three claimants, they were renovating an apartment in Yorktown Heights and worked from 9:00 a.m. to 3:00 p.m. or 3:30 p.m., for as few as two to as many as six days per week. The claimants were not required to work every day and could take a day off if they wanted. All three claimants commuted to work together in Rodriguez's car.

Hussein was not at the Yorktown Heights job very often and had little contact with the claimants because he was in the process of buying a house. According to Hussein, the claimants left work early, did things without his knowledge, and he was unhappy with their work. During the last couple of weeks that the claimants worked for him, Hussein went to the job to check if the claimants were working, "and they were never there." When asked by the Hearing Officer if Hussein kept track of the claimants' time, Hussein replied, "I did keep track of those days, and that's why the last day they worked for me, I had to get rid of them ... I fired them on the spot." Hussein testified that he did not keep any time records because he did not have a big business, and that he had no records of any days or hours worked by the claimants. After firing the claimants, Hussein could not finish renovating the apartment and the owner and Hussein agreed that the owner would find someone else to complete the job.

Hussein offered a copy of the check register from Hussein's checking account which indicated payment to each of the claimants about once a week from September 11, 2015 through December 17, 2015, with gaps from October 17 through November 3, 2015 and November 11 through December 8, 2015. According to Hussein, there was a one-week gap when the three claimants stopped working because Hussein fired the brother of one of the claimants. The check register entries for all three claimants indicate that they were "full paid" on December 17, 2015. The check register also indicated that on November 3, 2015, both Rodriguez and Venites were "paid full" in the respective amounts of $1,540.00 and $1,219.00. A November 11, 2015 entry shows that Venites was owed $300.00.

Testimony of Anan Hussein

Anan Hussein, Hussein's brother, often hung out or worked with his brother while on breaks from pharmacy school, but never on the Yorktown Heights job. Anan Hussein was waiting in Hussein's car sometime before Christmas in December 2015 while, he believes, Hussein fired the claimants. He believes that Hussein fired the claimants because when Hussein returned to the car, he said he had a lot of issues with the job and the workers were not doing what they were supposed to do. Anan Hussein did not remember the exact date in December 2015 when this happened but remembered that it was the middle of December because he had just returned home for his break from school, which is from early or mid-December to January. Anan Hussein never worked with Hussein at the job site where the claimants were working but did work at other job sites.

Respondent's Evidence

Testimony of Senior Labor Standards Investigator Shaun Abrilz

Shaun Abrilz (hereinafter "Abrilz"), a DOL senior labor standards investigator, testified about his investigation and offered in evidence the DOL's investigative file. On January 25, 2016, each of the claimants filed two sworn complaints with DOL: a "Claim for Unpaid Wages" and a "Minimum Wage/Overtime Complaint."

The three claimants' unpaid wages claims each allege that they were not paid for:

- 57 hours worked on six days during the week ending December 12, 2015;
- 38 hours worked on four days during the week ending December 19, 2015;
- 19 hours worked on two days during the week ending December 26, 2015;
- 28.5 hours worked on three days the week ending January 2, 2016; and
- 38 hours worked on four days during the week ending January 9, 2016.

Caceres's and Venites's unpaid wages claims allege that in these five weeks, each of their rates of pay was $130.00 per day, and they were each owed $875.75, $520.00, $260.00, $390.00, and $520.00 for the five weeks for a stated total of $2,565.00.[1] Rodriguez's unpaid wages claim alleges that in those five weeks, his rate of pay was $190.00 per day, and he was owed $1,262.78, $760.00, $380.00, $570.00, and $760.00 for the five weeks for a total of $3,732.78.

[1] The Board notes that these figures, when added, total $2,565.75 and not $2,565.00.

Caceres's minimum wage/overtime complaint alleged that he began work on July 20, 2015 and worked until January 7, 2016 when Hussein fired him because he did not have the money to pay him. According to the complaint, Caceres worked Monday through Saturday from "8 Am to 6:30 am" [sic] with a 30-minute break: a 60-hour workweek and was paid $130.00 per day.

Rodriguez's and Venites's minimum wage/overtime complaints were substantially similar, except that Rodriguez's rate of pay was $190.00 per day, while Venites's rate of pay, like Caceres, was $130.00 per day. Both Rodriguez and Venites stated their hours as "8 AM" to "6 - 7 PM" with a 30-minute break.

Abrilz testified that he reviewed the claims, determined how many hours were worked per week by each claimant, and created a spreadsheet to determine total underpayment. Abrilz sent Hussein a letter and the spreadsheet for each claimant on August 31, 2016, and a second letter and spreadsheets with revised computations on November 29, 2016. Both letters stated that based on information provided by the claimants, they were owed unpaid overtime wages, and if Hussein disputed the claims, he should send payroll records showing hours worked and wages paid during the period claimed, including time cards, sign in sheets, computer logs, payroll journals, cancelled paychecks or any other payroll record which demonstrated the claims were not valid. Abrilz's November 29, 2016 letter specified that Caceres was owed $5,101.81, Rodriguez was owed $7,580.00, and Venites was owed $5,316.31 for the period July 20, 2015 through January 9, 2016. A third letter by another DOL investigator, reiterating the amounts owed for the period July 20, 2015 through January 9, 2016, was sent to Hussein on October 23, 2017 again requesting payment or payroll records to dispute the claim. On December 8, 2016, Hussein provided check registers for the period September 11, 2015 through October 2, 2015. Abrilz testified that these records did not affect his audit since they did not include an hourly rate and there was no proof that the claimants were paid.

A narrative and spreadsheets offered in evidence show that Abrilz computed the wage underpayments based on each claimant working 60 hours per week from July 20, 2015 to January 9, 2016. Abrilz computed an hourly rate for each claimant by multiplying his daily rate ($130.00 for Caceres and Venites, $190.00 for Rodriguez) by six days, then dividing the total ($780.00 or $1,140.00) by 60 hours. This yielded regular hourly rates of $13.00 for Caceres and Venites and $19.00 for Rodriguez. Next, Abrilz applied a 50% overtime premium to these regular hourly rates and calculated weekly underpayment of $130.00 ($6.50 times 20 weekly overtime hours) to Caceres and Venites and $190.00 ($9.50 times 20 weekly overtime hours) to Rodriguez for the weeks ending July 25, 2015 through December 5, 2015. For the five weeks of the relevant period, December 12, 2015 through January 9, 2016, in which the claimants stated they worked 57, 38, 19, 28.5, and 38 hours per week and were not paid for their work, Abrilz calculated the claimants' underpayment using the $13.00 hourly rate for Caceres and Venites and the $19.00 hourly rate for Rodriguez that Abrilz had computed based on a 60 hour workweek.

Abrilz also offered in evidence a November 20, 2017 "Order to Comply Referral" prepared by a DOL supervisor recommending a 200% civil penalty. Abrilz testified that the civil penalty "is usually always 200 percent." Abrilz testified that the $1,000 civil penalty for failing to keep and/or furnish true and accurate payroll records for each employee represented the minimum penalty for those offenses.

Testimony of Claimant Gerson Venites

Venites testified that he worked for Hussein doing various types of construction work at different locations. When Venites was hired, Hussein told him that he would work from 7:00 a.m. to 3:00 p.m. and would be paid $130.00 per day. Venites and the other two claimants, however, worked each day until 5:00 or 6:00 p.m. Rodriguez drove Venites and Caceres to work, and also drove them home. Hussein never provided the claimants with a receipt or wage statement with their wages.

Hussein eventually stopped paying and the claimants stopped work. Hussein asked them to return, which they did for three days, during which time Hussein promised to get money to pay them, but he did not. Accordingly, the claimants refused to work any further without being paid. Hussein asked Venites to wait two weeks for payment, and when Hussein still did not pay him after two weeks, Venites complained to the DOL. Venites identified the unpaid wages and minimum wage/overtime complaints that he filed, and testified that the statement of weeks, hours and days on the unpaid wages claim (for the weeks ending December 12, 2015 through January 9, 2016) was correct. On cross-examination, Venites acknowledged that each of the claimants received a payment after the beginning of the relevant period, but Venites explained that the payment was to make up for prior weeks when Hussein had partially paid the claimants and was not for work performed during the relevant period.

GOVERNING LAW

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]). If the Board finds an order to comply or any part thereof invalid or unreasonable, it is directed to "revoke, amend or modify the same" (Labor Law § 101 [3]). Labor Law § 103 [1] provides that an order of the Commissioner shall be presumed valid. The hearing before the Board is *de novo* (Board Rules of Procedure and Practice (Board Rules) [12 NYCRR] § 66.1 [c]).

Petitioner's burden of proof in this matter is to establish, by a preponderance of the evidence, that the orders issued by the Commissioner are invalid or unreasonable (State Administrative Procedure Act § 306 [1]; Labor Law §§ 101, 103; Board Rules [12 NYCRR] § 65.30; *Garcia v Heady*, 46 AD3d 1088, 1090 [3d Dept 2007]; *Matter of Angello v Natl. Fin. Corp.*, 1 AD3d 850, 854 [3d Dept 2003]; *Matter of RAM Hotels, Inc.*, Docket No. PR 08-078, at p. 24 [October 11, 2011]).

An Employer's Obligation to Maintain Adequate Payroll Records

The Labor Law requires employers to maintain accurate payroll records that include the employees' daily and weekly hours worked, wage rate, and gross and net wages paid (Labor Law § 661; Department of Labor Regulations [12 NYCRR] § 142-2.6). Employers are required to keep such records open to inspection by the Commissioner or a designated representative at the place

of employment and maintain them for no less than six years (*id.*). Employers are further required to furnish each employee a statement with every payment of wages listing the hours worked, rates paid, gross and net wages, and any allowances claimed as part of the minimum wage (Labor Law § 661; Department of Labor Regulations [12 NYCRR] § 142-2.7). The required recordkeeping provides proof to the employer, the employee, and the Commissioner that the employee has been properly paid.

The Burden of Proof in the Absence of Legally Required Payroll Records

In the absence of accurate records required by the Labor Law, an employer bears the burden of proving that the disputed wages were paid (Labor Law § 196-a). Where the employer has failed to keep such records, the Commissioner may draw reasonable inferences and calculate unpaid wages based on the "best available evidence" drawn from employee statements and other evidence, even though the results may be approximate (*See, e.g., Matter of Baudo v New York State Indus. Bd. of Appeals*, 154 AD3d 535, 536 [1st Dept 2017]; *Matter of Ramirez v Commissioner of Labor of State of N.Y.*, 110 AD3d 901, 901-902 [2d Dept 2013]. As the Appellate Division stated in *Matter of Mid Hudson Pam Corp v Hartnett*, (156 AD2d 818, 820-821 [3d 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 calculation to the employer." Therefore, the petitioner has the burden of showing that the Commissioner's order is invalid or unreasonable by a preponderance of the evidence of the specific hours that the claimants worked and that they were paid for these hours, or other evidence that shows the Commissioner's findings to be invalid or unreasonable (*Matter of Joseph Baglio and the Club at Windham*, Docket No. PR 11-394, at p. 7 [December 9, 2015]; *Matter of RAM Hotels, Inc.*, Docket No. PR 08-078, at p. 24).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Petitioner Failed to Maintain Required Records and the $1,000.00 Civil Penalty for Recordkeeping Violations Is Affirmed

The order assesses a $1,000.00 penalty for violating Labor Law § 661 and Department of Labor Regulations (12 NYCRR) § 142-2.6 for the period July 8, 2015 through January 1, 2016 by failing to keep required records. Labor Law § 218 (1) provides that where a violation is for a reason other than an employer's failure to pay wages, the order shall direct payment to respondent of a civil penalty in an amount not to exceed $1,000.00 for a first violation. We find that Hussein did not produce any credible evidence to show that he maintained payroll records. Although he testified that he kept track of the three claimants' time during the two weeks before he fired them, Hussein later contradicted himself and stated that he, in fact, never kept any time records because he did not have a large business.

Moreover, the check register provided by Hussein as proof of payment to the claimants is legally insufficient as a payroll record. The check register does not include the claimants' daily and weekly hours, their rate of pay, or the pay periods worked, as legally required (Labor Law §

661 and Department of Labor Regulations [12 NYCRR] § 142-2.6). We therefore affirm the $1,000.00 civil penalty for this recordkeeping violation.

The Minimum Wage Order is Affirmed but Modified As To The Amount of Wages Owed

Subject to the modifications below, we find that Hussein failed to meet his burden of proving that the three claimants were paid in full for their work during the relevant period and that they did not work after December 17, 2015.

Hussein testified that he visited the Yorktown Heights worksite infrequently and the three claimants left work without his knowledge. According to Hussein, during the last two weeks prior to firing the claimants on December 17, 2015, he went to the site to see if the three claimants were working "and they were never there." He further testified "I did keep track of those days and that's why the last day they worked for me, I fired them." Hussein later admitted that he did not maintain any time records. Other than stating that the claimants were never there, Hussein did not state the specific days and hours the claimants worked during the relevant period. He testified in general that they worked from September 20 or 26 to December 17, 2015, were paid a daily rate, worked anywhere from two to six days per week from 9:00 a.m. to 3:00 or 3:30 p.m., were not required to work every day and could take a day off from work if they wanted. Anan Hussein, Hussein's brother, testified that in mid-December 2015, Hussein fired the claimants, but we give little weight to his testimony as Anan Hussein remained in the car when Hussein spoke to the workers and Anan Hussein gave no testimony indicating that he could even identify who he observed Hussein talking to.

Hussein asserted that his check registers for the period September 11 through December 17, 2015 proved that the three claimants were "full paid" on December 17, 2015 and that was their last day of work. As discussed above, the check register does not include the claimants' daily and weekly hours, their rate of pay, or the pay periods worked, as legally required (Labor Law § 661 and Department of Labor Regulations [12 NYCRR] § 142-2.6). Moreover, the check register entries on December 17, 2015 and November 3, 2015 that claimants were "full paid" or "paid full" is consistent with the idea that Hussein, having fallen behind in wage payments, caught up on those dates, the notations certainly do not show that the claimants did not work and earn additional wages thereafter, especially since the check registers contained two previous gaps in payment. The check registers also indicate that Venites was owed $300.00 on November 3, 2015 and show gaps in payment from October 17 through November 3 and November 11 through December 8, 2015. Although Hussein testified that there was a one-week period when the three claimants stopped working because of the firing of the brother of one of the claimants, he provided no explanation for the additional gaps in payment to the claimants which spanned several weeks. Thus, the check registers not only do not prove the petitioner's case, but actually evidence that he was often behind in paying earned wages.

We credit Venites's testimony that the check he received during the relevant period was not for work performed during that period but was to make up for prior weeks for which Hussein had only partially paid the claimants or not paid them at all. The check register confirms that Venites was owed $300.00 on November 3, 2015, and Hussein presented no credible evidence that claimants did not work during the gap periods in the check register or were paid for work during these periods. We credit Venites's testimony of the days and hours that he worked, which was consistent with his claim and the claims of the other two claimants. Not only do the check registers

confirm that Hussein was unable to pay the claimants on time, but Hussein testified that "the business didn't work out as well as I thought it would," he ultimately had to dissolve it, and he could not complete the Yorktown Heights renovation after supposedly firing the claimants.

We find that Hussein's testimony was vague, contradictory, and uncorroborated. Hussein did not provide corroborating testimony, such as the testimony of the Yorktown Heights apartment owner to prove the days and hours worked during the relevant period and that the three claimants did no work at the Yorktown Heights worksite after December 17, 2015. Hussein's testimony that the claimants were terminated on December 17, 2015, were paid in full for all work, and did no work after December 17, 2015 was simply too general and conclusory to overcome the presumption favoring the Commissioner's order and to meet petitioner's burden.

The Board has repeatedly held that general, conclusory and incomplete testimony is insufficient to satisfy the high burden of precision required to meet an employer's burden of proof in the absence of required records (*Matter of Frank Lobosco and 1378 Coffee, Inc.*, Docket No. PR 15-287, at p. 6 [May 3, 2017] citing *Matter of Young Hee Oh*, Docket No. PR 11-017, at p. 12 [May 22, 2014] [employer cannot shift its burden to DOL with arguments, conjecture, or incomplete, general, and conclusory testimony]). Because petitioner provided no evidence of legally required records of the daily and weekly hours worked or wages paid to the claimants, and proof that they were paid for those hours, the Commissioner was entitled to use the best available evidence as a basis for her calculation of underpayment (Labor Law §196-a; *Matter of Ramirez v Commissioner of Labor*, 110 AD3d at 901-902). Here, the Commissioner used the best available evidence - the claims filed by the claimants which was corroborated by Venites's credible testimony at hearing. We affirm the Commissioner's order subject to the modifications discussed below.

While we affirm the order, we find that it must be modified as detailed below. The order stated it was awarding wages earned from December 12, 2015 through January 9, 2016. While the order's statement of the period during which wages were earned is likely a typographical error, since previous DOL correspondence with Hussein referred to the period July 20, 2015 through January 9, 2016, we are limited to affirming wages owed during the relevant period in the order. The Board has repeatedly held that even if a wage award should have been for more wages than the DOL found due, we cannot affirm an award beyond the order's own scope. (*Matter of Jaroslaw S. Skorupski and Best Choice Renovation, Inc.*, Docket No. PR 16-019, at p. 11 [September 13, 2017]; *Matter of Iqbal Ahmed*, Docket No. PR 12-081, at p. 10 [April 13, 2016]; *Matter of Llesh J. Beqiraj (T/A University Pizza & Restaurant)*, Docket No. PR 11-393, at p. 9 n 3 [July 22, 2015]). Accordingly, the order in the present case must be modified to reflect only the underpayments occurring during the period referred to in the order, that is, December 12, 2015 to January 9, 2016.

Applying Abrilz's methodology for computing the underpayment to the relevant period, the following table shows the wages earned but unpaid to Caceres and Venites during the relevant period:

Week Ending	Hourly Rate	Hours Worked	First 40 Hours	OT Hours	Pay Earned
12/12/2015	$13.00	57	$520.00	$331.50	$851.50
12/19/2015	$13.00	38	$494.00	-	$494.00
12/26/2015	$13.00	19	$247.00	-	$247.00

1/2/2016	$13.00	28.5	$370.50	-	$370.50
1/9/2016	$13.00	38	$494.00	-	$494.00
TOTAL					$2,457.00

Similarly, the following table shows the wages earned but unpaid to Rodriguez during the relevant period:

Week Ending	**Hourly Rate**	**Hours Worked**	**First 40 Hours**	**OT Hours**	**Pay Earned**
12/12/2015	$19.00	57	$760.00	$484.50	$1,244.50
12/19/2015	$19.00	38	$722.00	-	$722.00
12/26/2015	$19.00	19	$361.00	-	$361.00
1/2/2016	$19.00	28.5	$541.50	-	$541.50
1/9/2016	$19.00	38	$722.00	-	$722.00
TOTAL					$3,591.00

The liquidated damages, and interest must be modified proportionally.

The 200% Penalty in the Order Is Revoked

Labor Law § 218 (1) provides that when the Commissioner determines that an employer has violated a provision of Article 19, she must issue an order directing payment of any wages found to be due, liquidated damages in the amount of one hundred percent of unpaid wages, plus "the appropriate civil penalty." In all cases, the Commissioner "shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements." For "an employer who previously has been found in violation … or … whose violation is willful or egregious," a penalty up to 200% of the amount of unpaid wages is authorized.

The order awarded a civil penalty of 200% of the unpaid wages. Abrilz testified that "[t]he civil penalty is usually always 200 percent," obviously contrary to the statute. As discussed above, Labor Law § 218 (1) authorizes a penalty of up to 200% the amount of unpaid wages in the case of an employer "who previously has been found in violation" or "whose violation is willful or egregious." The DOL presented no evidence that Hussein was previously found in violation or that his violation was willful or egregious, nor did the respondent identify factors listed in Labor Law § 218 (1) to show that due consideration was given to these factors. We find that respondent provided no valid and reasonable explanation for the imposition of a penalty and modify the order by revoking the 200% civil penalty.

Liquidated Damages and Interest Must Be Modified Proportionally

The petition did not challenge the order's award of liquidated damages or interest, and any such challenge has been waived pursuant to Labor Law § 101 (2). In any event, Labor Law § 218 (1) requires respondent to include liquidated damages in the amount of 100% of the wages found due with the order unless the employer "proves a good faith basis to believe that its underpayment was in compliance with the law." The petitioner here provided no such proof. Labor Law § 219

(1) provides that when the Commissioner determines that wages are due, the order directing payment of those wages 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." Here, respondent correctly determined that claimant was not paid all wages owed and petitioner did not offer any evidence to challenge the imposition of interest.

We affirm the imposition of liquidated damages and interest in the order, but the amounts of liquidated damages and interest must be modified to conform to the recalculation of unpaid wages.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage order is affirmed as modified in that:

   (a) the wages found due and owing are reduced to $8,951.04 ($2,457.00 to each of Jairo Joel Sosa Caceres and Gerson Eliud Venites Erazo, and $3,591.00 to Luis Rolando Rodriguez);

   (b) the awards of liquidated damages at 100% of unpaid wages and interest at 16% per annum on the unpaid wages are affirmed, but their amounts are modified to conform to the recalculation of unpaid wages;

   (c) the 200% civil penalty is revoked; and

   (d) the $1,000.00 penalty for violating Labor Law § 661 and Department of Labor Regulations (12 NYCRR) § 142-2.6 is affirmed.

2. The petition for review be, and it hereby is, otherwise denied.

Molly Doherty, Chairperson

J. Christopher Meagher, Member

Michael A. Arcuri, Member

Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York,
on May 29, 2019