

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

CELIA DURAO, DURAU BUILDING
ENTERPRISES, INC., AND DURAO CONCRETE
CORPORATION,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 19 of the Labor Law
and an Order Under Articles 6 and 19 of the Labor Law,
each dated April 26, 2016,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 16-076

INTERIM
RESOLUTION OF DECISION

APPEARANCES

Neufeld & O'Leary, New York (*Janet Kljyan* of counsel) for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Steven J. Pepe* of counsel),
for respondent.

WHEREAS:

The above proceeding was commenced on June 23, 2016 when petitioners Celia Durao, Durao Building Enterprises, Inc. and Durao Concrete Corporation 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) of two orders issued by respondent Commissioner of Labor against Celia Durao and Durao Building Enterprises, Inc. The petition states that Durao Building Enterprises, Inc. is improperly named in the orders and has had no business operations since 2005, and the order failed to name Durao Concrete Corporation as the proper party.


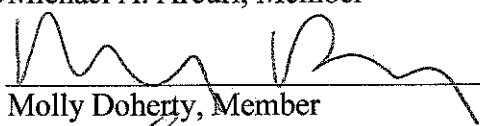

On December 20, 2016, respondent moved for an order granting respondent permission to amend and reissue the orders. Specifically, respondent seeks to amend the orders to substitute Durao Concrete Corporation as the liable corporate employer.

Petitioners oppose respondent's motion on the basis that Durao Concrete Corporation is the correct corporate entity and the proposed amended orders improperly identify the employer as Celia Durao d/b/a Durao Concrete Corporation. The Board approves the amendment and

reissuance of the orders as requested by respondent. The determination of employer status will be decided based on the evidence presented at hearing. The Board suspends any interest that has accrued between December 20, 2016 and the date respondent files an answer with the Board.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Board approves respondent's amendment of the orders to include "Celia Durao d/b/a Durao Concrete Corporation" as liable parties, and upon amendment of the orders, their reissuance; and
2. Respondent shall serve the amended orders on all parties named by the amended orders, in accordance with Labor Law § 33 within 30 days of service of this decision, with proof of service filed with the Board; and
3. No later than sixty days from respondent's service on petitioners of the amended orders, petitioners shall file with the Board an amended petition or writing stating they rely on the petition already filed, with proof of service of the petition or writing on respondent; and
4. Upon receipt of petitioners' amended petition, if any, respondent shall file an answer in accordance with Board Rule (12 NYCRR) § 66.5; and
5. Any petition filed by Celia Durao d/b/a Durao Concrete Corporation shall be consolidated with the petition of Celia Durao and Durao Building Enterprises, Inc. under Board docket number PR 16-076; and
6. The accrual of interest in the amended orders is suspended from December 20, 2016 until the date that respondent files an answer with the Board, with proof of service on petitioners.


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 March 1, 2017.