

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ROSA A. MEJIA AND LA NUEVA COCINA
RESTAURANT, INC. (T/A LA COCINA
RESTAURANT INC.),

Petitioners,

To Review Under Section 101 of the Labor Law: An
Order to Comply with Article 19 of the Labor Law, an
Order to Comply with Article 6 of the Labor Law, and
an Order Under Articles 5, 6, and 19 of the Labor
Law, all dated October 31, 2014, and amended on
October 15, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NOS.
PR 14-347 and PR 15-401

RESOLUTION OF DECISION

APPEARANCES

Rosa A. Mejia, petitioner pro se, and for La Nueva Cocina Restaurant, Inc.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Taylor Waites* of counsel), for respondent.

WHEREAS:

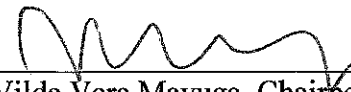
1. The above proceeding was commenced on December 29, 2014 by the filing of a petition for review pursuant to Labor Law § 101 and Industrial Board of Appeals' Rules of Procedure and Practice (Board Rules) (12 NYCRR) § 66 of the orders issued by the respondent Commissioner of Labor against petitioners on October 31, 2014. The Board assigned this matter case docket number PR 14-347; and
2. Respondent Commissioner of Labor moved on February 23, 2015 for an order granting permission to issue amended orders to remove wages owed for a time period that exceeded the six-years prior to the date when respondent received a claim against petitioners, and to modify the civil penalties, interest and liquidated damages accordingly; and
3. The motion to amend the orders was not opposed; and

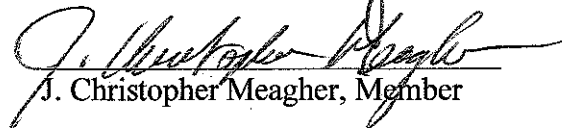
4. By Interim Resolution of Decision dated April 29, 2015, we approved the issuance of the amended orders as requested by respondent, effective the date of the decision, with the accrual of interest suspended for the period from February 23, 2015 to the date respondent serves the amended orders, and ordered service of the amended and reissued orders on petitioners in accordance with Labor § 33 within 30 days of service of our interim decision and that proof of service be filed with the Board. Since our interim decision was served on petitioners by mail on May 8, 2015, respondent was required to serve the amended orders on petitioners on or before June 12, 2015; and
5. Respondent having failed to file proof of service of amended orders as directed by our interim decision, we advised respondent by letter dated September 8, 2015, that if the orders were not served and proof of service filed within 30 days of the date of our letter, the Board, following *Matter of Donigan et al.*, PR 14-192 (July 22, 2015), would grant the petition. Our letter, therefore, required respondent to serve the amended orders and file proof of service on or before October 13, 2015. Because the amended orders were not served until October 15, 2015 and respondent provided no explanation for failing to comply with our interim decision, we issued a Resolution of Decision, dated October 28, 2015, granting the petition; and
6. On December 14, 2015, petitioners filed a petition appealing the amended orders issued on October 15, 2015. The petition was assigned docket number PR 15-401 by the Board and served on respondent on December 17, 2015. By letter dated January 12, 2016, respondent requested an extension, which we granted, until February 29, 2016 to file a response to the petition; and
7. On February 29, 2016, respondent filed an answer to the December 14, 2015 petition, and a motion for reconsideration of our decision of October 28, 2015 and for consolidation of the petitions filed by petitioners; and
8. In an Interim Resolution of Decision dated September 14, 2016, respondent's motion was granted. Petitioners, who did not oppose the motion, did not set forth any prejudice or other grounds upon which the motion should be denied. In the interest of deciding matters on the merits, our decision of October 28, 2015 was revoked, the accrual of interest on the orders was suspended from October 31, 2014 until such date as the Board issues a final decision in this matter, and the petitions were consolidated under Docket No. PR 15-401; and
9. Upon notice to the parties, dated November 1, 2016, a hearing was scheduled for February 17, 2017; and
10. Petitioners failed to attend or otherwise appear at the hearing on February 17, 2017; and
11. Pursuant to Labor Law § 103 and Board Rule (12 NYCRR) § 65.30, the burden of proof is on petitioners to prove that the orders under review are not valid or reasonable; and
12. Pursuant to Board Rule (12 NYCRR) § 65.24, "the failure of a party to appear shall be deemed a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review" pursuant to Board Rule (12 NYCRR) § 65.41, unless application for reinstatement is made within five days after the scheduled hearing; and

13. Petitioners have not made any application for reinstatement.


NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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


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 May 3, 2017.

13. Petitioners have not made any application for reinstatement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York
on May 3, 2017.