

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
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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 and	:
reissued October 15, 2015,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
-----X	:

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

INTERIM
RESOLUTION OF DECISION
GRANTING RECONSIDERATION

APPEARANCES

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

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

On December 29, 2014, petitioners filed a petition for review of orders issued by respondent Commissioner of Labor on October 31, 2014. We served the petition on the Commissioner on January 22, 2015. On February 23, 2015, the Commissioner moved for an order granting permission to issue amended orders because the orders issued under Article 19 and Article 6 assessed wages, interest, and civil penalties for a time period exceeding six years prior to the date when respondent received a claim against petitioners. Respondent sought to issue amended orders that would remove calculations for the period from October 7, 2002 through January 27, 2003, for both orders, and to modify the civil penalties, interest, and liquidated damages in accordance with the newly assessed wages due and owing. The motion to amend the orders was not opposed.

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. Because 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, 2015.¹

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, 2015.² 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.

On December 14, 2015, petitioners filed a petition appealing the amended orders issued on October 15, 2015. The petition was assigned docket number 15-401 by the Board and served on respondent on December 17, 2015. By letter dated January 12, 2016, respondent requested an extension until February 29, 2016 to file a response to the petition. We granted the request.

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. Petitioners did not reply to the motion. Respondent's motion is granted. Petitioners, who did not oppose the motion, have 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 is revoked, the accrual of interest on the orders is suspended from October 31, 2014 until such date as the Board issues a final decision in this matter, and the petitions are consolidated under Docket No. PR 15-401.

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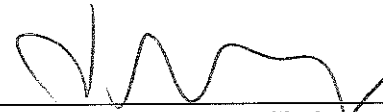
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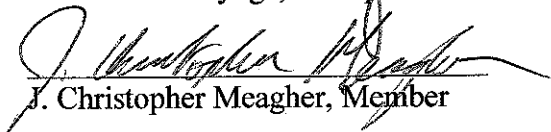
¹See Board Rules 65.3 (12 NYCRR 65.3).

² *Id.*


NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent's motion for reconsideration is granted; and
2. The Board's Resolution of Decision in this matter issued October 28, 2015 is revoked; and
3. Accrual of interest on the orders is suspended from October 31, 2014 until a final decision is issued by the Board; and
4. Respondent's motion for consolidation is granted and the petitions are consolidated for hearing under Docket No. PR 15-401.



Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

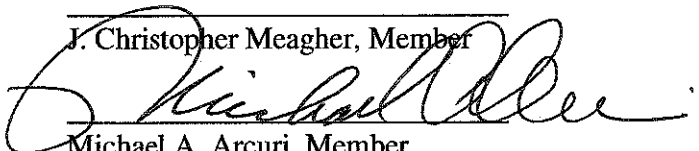
Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York, on
September 14, 2016.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent's motion for reconsideration is granted; and
2. The Board's Resolution of Decision in this matter issued October 28, 2015 is revoked; and
3. Accrual of interest on the orders is suspended from October 31, 2014 until a final decision is issued by the Board; and
4. Respondent's motion for consolidation is granted and the petitions are consolidated for hearing under Docket No. PR 15-401.

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 Syracuse, New York, on
September 14, 2016.