THE COMMISSIONER OF LABOR, :
:
Respondent. :
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APPEARANCES

Joel D. Fairbank, *pro se,* for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Wasyl of Counsel, for Respondent.

WITNESSES

Joel D. Fairbank and Benjamin S. Young for Petitioners; Labor Standards Investigator Norberto Chabrier and Elaine Estrada for the Respondent.

WHEREAS

A Petition for review in the above-named case was received by the Industrial Board of Appeals (Board) on March 19, 2009. Petitioners Joel D. Fairbank and 2nd Nature, LLC. (together, Petitioners) seek to vacate an Order to Comply with Article 6 of the Labor Law that the Respondent Commissioner of Labor (Commissioner) issued against Petitioners on January 20, 2009. The Order finds that Petitioners failed to provide vacation, expense reimbursement, and dental benefits (together, supplemental wages) in accordance with Labor Law § 198-c, which requires an "employer who is party to an agreement to pay or provide benefits or wage supplements to employees . . . to provide such benefits or furnish such supplements within thirty days after such payments are required to be made . . . ."

The Order directs Petitioners to pay to the Commissioner $1,086.40 for supplemental wages owed to Elaine Estrada (Claimant) in the amount of $1,086.40, with interest continuing thereon at the rate of 16% to the date of the Order in the amount of $185.25, and a civil penalty of 50% of the supplemental wages due in the amount of $543.00, for a total amount due of $1,814.65 for the period covering June 18, 2007 to December 28, 2007.

Petitioners challenge the Order on the ground that Claimant was an exempt administrative employee and is therefore not entitled to the protections of New York State Labor Law § 198-c. Petitioners also contend that Claimant is not entitled to vacation pay as 2nd Nature's posted vacation policy excluded pay for unused vacation time upon separation from employment. Petitioners argue that Claimant is not entitled to reimbursement for dental bills as she never enrolled in the dental plan that may have covered her expenses. Finally, Petitioners argue that Claimant is not entitled to reimbursement for business expenses as Petitioners previously reimbursed Claimant for all receipted expenses that the Department of Labor (DOL) directed that she be paid and because the Order, though parenthetically referring to expenses, does not include them in the total amount found due for supplemental wages.

The Commissioner filed an Answer to the Petition, denying the material allegations and contending that the Order is valid and reasonable as Petitioners did not have a written vacation policy that included a forfeiture provision. According to the Commissioner, Claimant's unreimbursed dental bills are due and owing as Claimant elected dental coverage and deductions were taken from her paycheck for such coverage. Further, Commissioner maintains that Petitioners did not have a written dental policy, nor did they make clear that enrollment for medical and dental coverage required completion of separate forms. The Commissioner also argues that Petitioners did not sustain their burden to show that they do not owe miscellaneous expenses to the Claimant.

A hearing was held on December 1, 2009 before the Board Deputy Counsel and designated Hearing Officer Sandra M. Nathan. Each party was afforded full opportunity to present documentary evidence, to examine and cross-examine witnesses, and to make statements relevant to the issues.

SUMMARY OF EVIDENCE

2nd Nature, LLC., is an interactive web design studio and Joel D. Fairbank is its managing member and secretary. Petitioners employed Claimant as a web project manager from June 18, 2007 through December 28, 2007. Labor Standards Investigator Norberto Chabrier had no personal knowledge of DOL's investigation of this matter.

The Administrative Exemption

Petitioner Fairbank testified that Claimant was exempt as an administrative employee because she earned $740 a week, which is more than the $600 Fair Labor

Standards Act (FLSA) wage threshold for administrative exempt status, and because her job duties and responsibilities qualified her position for the administrative exemption.

Petitioner stated that Claimant was responsible for the management of client projects, the administration of emails, telephone calls, meeting with clients and staff, ensuring that project costs were within budget, and supervising some employees. Petitioner conceded that Claimant was not responsible for the management of 2nd Nature's general business operations, had no authority to hire or fire employees, could not set employee wages, and did not have responsibility for 2nd Nature's overall budget.

Claimant testified that she visited with clients, initially along with one of 2nd Nature's partners, produced project proposals for cost estimates, monitored the progress of projects and performed some "administrative" tasks such as taking phone calls, meeting with staff and informing them when clients needed to be visited or when clients were coming to the office. She also had to make sure that costs were within budget and that delivery dates were met. She testified that she was not responsible for compliance with laws, rules or regulations, did not exercise independent judgment concerning 2nd Nature's operation, and agreed with Fairbank that she was not responsible for the management of 2nd Nature's business or operations.

Vacation Pay

Petitioner Fairbank's testimony can be summarized as follows:

Petitioners' vacation policy was established prior to Claimant's hire and was posted in a conspicuous work area throughout her employment. That policy entitled an employee to a vacation amount that was agreed to at the time of hire. Claimant was promised one week's vacation, which was confirmed by a June 14, 2007 email Petitioner sent to Claimant that stated "We offer one week of vacation after the first six months of employment. . . ."

According to the posted vacation policy, monthly accrued vacation time was earned by dividing the yearly amount of vacation granted by 12 months. Vacation was scheduled with 30 days advance notice, and as all employees were paid a salary, no additional pay inured to the employee - time was taken consistent with the policy and pay was not reduced. An employee did not have the option of working and being paid extra in place of time off, and Claimant was not entitled to pay for unused vacation when she terminated her employment with 2nd Nature as Petitioners' posted written vacation policy specifically stated "[V]acation time is never redeemable as cash at the time of employment termination or any other time."

At hearing, Claimant contended that Fairbank and Benjamin Young, 2nd Nature's design director, partner, and principal, told her at her initial interview, that she was entitled to two weeks' vacation with no wait period. She also maintained that she never saw a vacation policy, and that none was ever posted.

Claimant testified that Petitioners' June 14th email represented a proposal of one week's vacation which was modified to two weeks' through subsequent negotiations. She also stated that she did not take any vacation while employed (which Petitioners do not dispute) and was never told that she would forfeit her vacation when her employment ended.

Dental Bills

Fairbank testified that 2nd Nature offered an Excellus Blue Cross/Blue Shield medical insurance plan ("Excellus plan") that included a limited dental benefit that covered only "accidental injury to sound natural teeth." Through a subsidiary of Excellus Blue Cross/Blue Shield, Petitioners also offered a separate dental plan, called "Plan 15," which provided broader dental benefits, including reimbursement of 80 % of the cost of certain preventive dental services such as teeth cleaning and x-rays. There was no deductible for these dental services, and the maximum annual coverage per individual was $1500.

According to Fairbank, he sent Claimant an email before she was employed that attached Plan 15's summary of benefits and deductibles. Fairbank's email stated that "I have attached PDFs of the medical and dental plans for which we provide a 50% employer contribution. Our medical and dental plans are with Excellus BC/BS. The dental plan is the Plan 15 and the new rates effective 7/1/07 are as follows: Individual 34.99/ mo. Family 89.52/mo." Also attached to Fairbank's email was an Excellus plan benefit and cost summary which described its limited dental coverage.

Fairbank testified that once employed, Claimant told him that she wanted to enroll in the Excellus plan. Petitioner then contacted 2nd Nature's insurance agent, who provided him an "Excellus Group Enrollment Form" for Claimant to complete. That form included boxes for medical, dental, vision, and drug coverage for different levels of family or individual coverage. Claimant completed the form and selected individual medical, dental, and drug coverage.

Petitioner maintains that by checking the dental box for individual coverage, Claimant selected the Excellus plan's dental coverage, but did not enroll in Plan 15, which required the completion of a different enrollment form. Petitioner further asserts that $8.07 per paycheck, the employee's share of the premium for individual coverage under Plan 15, was never deducted from Claimant's paycheck, and he produced payroll records confirming that the deduction was not made, but was made for other employees. Petitioner stated that he never gave Claimant a Plan 15 enrollment form because Claimant never requested it.

Claimant testified that she believed that dental premiums were deducted from her paychecks and that she "received a form that stated it was approximately seven dollars and change." However, a DOL record in evidence shows that Senior Labor Standards Investigator Christine Anderson, in an October 3, 2008 letter to Fairbank, conceded that no deductions were made from Claimant's pay for dental insurance. When Claimant completed the Excellus form, she believed that she would receive medical and dental coverage and that her Excellus medical card represented medical and dental coverage. She testified that she

was never provided any other forms for dental coverage, nor was she told that completing the Excellus form entitled her to only Excellus' limited dental benefit.

Claimant also testified that shortly after she completed the Excellus form, Fairbank provided her with a document showing a per pay period deduction of $8.08 for dental coverage, which she understood as evidence that she had dental coverage. However on cross examination, Claimant testified that a deduction of this amount never appeared on any of her pay stubs.

In December 2007, Claimant's dentist billed her $76.00 for a "TMJ Exam and Diagnosis" performed on December 14, 2007. Her bill also reflected Claimant's payment of $77.00 and a $270.00 "PREVIOUS BALANCE." Claimant testified that her $77.00 payment was for the TMJ exam and diagnosis, which she paid because her dental office told her that those charges probably would not be covered by insurance. Claimant also testified that she believed that the $270.00 previous balance was for work done at some time during her employment with 2nd Nature. However, she did not know with certainty what dental procedures the previous balance covered, though she believed it was for "bite wing x-rays, prophylaxis, and for [the] TMJ exam and diagnosis . . ."

Claimant testified that she gave her dentist her Excellus medical plan insurance card prior to any work being done, and that his office assured her that she "should have no problem." Claimant's December 2007 dental bill states that on December 14, 2007 Claimant's "Insurance [was] Billed," that $179.00 was expected to be paid by insurance, and that on December 27, 2007 insurance rejected the claim.

When Claimant's dental office informed her that her claims were rejected, she told Petitioner that she had no dental insurance, and according to Claimant, Petitioner responded, "of course you do," and gave her a 2nd Nature's insurance agency contact. That contact confirmed that she was not enrolled in Plan 15.

Unreimbursed Expenses

DOL's records in evidence show that by letter dated July 31, 2008, Investigator Anderson informed Petitioners that Claimant claimed that they owed her $100 in unreimbursed expenses. However, by letter dated October 3, 2008, Investigator Anderson told Petitioners that Claimant's receipts showed that "[t]he total of the expenses are $32.28." After Petitioners received the October 3rd letter, they reimbursed the Claimant the $32.28.

Claimant explained that she incurred approximately $100 in expenses for items such as food, postage, and the delivery of packages, and that despite Petitioners' promise to reimburse her for all her business expenses, she was reimbursed only the $32.28. Claimant testified that in response to Investigator Anderson's request, she provided receipts for $32.28 and that those were the only receipts that she was able to find. On cross examination, Claimant agreed that the Order did not include unreimbursed expenses, as the Order was for $1,086.40 which represented one week's vacation at $740.40 and $346 in dental bills.

GOVERNING LAW

Standard of Review and Burden of Proof

The Labor Law provides that "any person...may Petition the board for a review of the validity or reasonableness of any . . . order made by the [C]ommissioner under the provisions of this chapter" (Labor Law 101 §[1]). It also provides that a Commissioner's order shall be presumed "valid" (Labor Law §103 [1]).

A petition filed with the Board that challenges the validity or reasonableness of an order issued by the Commissioner must state "in what respects [the order on review] is claimed to be invalid or unreasonable" (Labor Law § 101[2]). It is a petitioner's burden at hearing to prove the allegations that are the basis for the claim that the order under review is invalid or unreasonable (Board Rules of Procedure and Practice § 65.30 at 12 NYCRR § 65.30 ["The burden of proof of every allegation in a proceeding shall be upon the person asserting it"); *Angelo v Natl. Fin. Corp.,* 1 AD 3d 850, 854 [3d Dept 2003]). It is therefore Petitioners' burden to prove, by a preponderance of the evidence, that the Claimant was an exempt employee and that if not, that vacation pay, reimbursement for dental bills, and certain miscellaneous expenses are not due and owing.

Claimant was not Employed in "Bona Fide Administrative" Capacity Within the Meaning of Labor Law § 198-c (3).

Labor Law § 198-c (1) requires employers to pay benefits or wage supplements, which include but are not limited to "reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay" (Labor Law § 198-c [2]). However, at all times relevant to the period that the Order covers, Labor Law § 198-c (3) exempted from the protections of Labor Law § 198-c, any person in a bona fide administrative . . . capacity whose earnings [are] in excess of six hundred dollars a week."

Section 198-c is within Labor Law Article 6 which does not define "bona fide administrative capacity." In construing this term we must apply the basic rules of statutory construction. Remedial statutes, such as the wage and hour statutes at issue here, are to be liberally construed and exemptions are to be narrowly applied (*Garcia v Heady* 46 AD 3d 1088 [3d Dept 2007]; *Scott Wetzel Servs. v NYS IBA* 252 AD 2d 212 [3d Dept 1998]; Statutes § 322). Words or phrases used in the same or related statutes will be presumed to have the same meaning (Statutes § 236). Thus, it is reasonable to refer to the administrative exemption criteria under Article 19 for guidance in understanding whether an employee is administratively exempt under Article 6. (*See In the Matter of Gary Yorke and/or Pristine Plumbing & Heating, Inc.,* PR 07-035 [September 24, 2008] wherein we relied on the definition of a "bona fide executive" provided in 12 NYCRR 142-2.14 (c) (4) (i) in deciding whether an employee was exempt as an executive under Article 6).

Title 12 NYCRR § 142-2.14 (c) (4) (ii) defines an administrative employee as an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of such individual's employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant); or who performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary of not less than:
(4) $536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities.

In applying the criteria of 12 NYCRR § 142-2.14 (c) (4) (ii), we find that Claimant was not exempt from the protections of Labor Law § 198-c because she did not work in a bona fide administrative capacity. While Petitioners have shown that Claimant met the salary threshold for administrative exemption, they failed to show that she met any of the other criteria listed in 12 NYCRR § 142.2.14 (c) (4) (ii).

Claimant's primary duty was the management and administration of client projects and the delivery of 2nd Nature's product. In that role she managed client requests, initiated tasks, monitored project progression and budgets, administered email correspondence and telephone calls, and met with clients and staff. However, she did not have any responsibilities for the management or the operation of Petitioners' business.

Further, Petitioners offered no evidence regarding whether Claimant exercised discretion and independent judgment. Claimant, however, testified she did not "exercise any independent judgment regarding how 2nd Nature, LLC was run as a business."

Petitioners also did not show that Claimant acted as their assistant or as an assistant to an employee employed in an executive or administrative capacity. While Claimant met with clients with one of 2nd Nature's partners "initially," there is no evidence she assisted either Fairbank or any of 2nd Nature's employees who acted in an executive or administrative capacity in any ongoing manner.

Finally, there is no evidence that Claimant worked along "specialized or technical lines requiring special training, experience or knowledge."

The Order's Finding That Petitioners Owe Claimant Vacation Pay is Unreasonable.

New York does not require employers to provide vacation pay to employees. However, when an employer establishes a paid vacation leave policy for its employees, Labor Law § 198-c requires that the employer provide this benefit in accordance with the terms of the established leave policy. *(Gennes* v *Yellow Book of New York, Inc.*,23 AD3d 520, 521 [2nd Dept 2005]; *Matter of Glenville Gage Co.,* v *State Indus. Bd. of Appeals, 52*

NY2d 777 [1980], *affg* 70 AD2d 283 [3rd Dept 1979]; *In the Matter of the Petition of Nathan Godfrey [TIA A.S.U.]*, PR 09-024 [January 27, 2010]; *In the Matter of the Petition of Center for Fin. Planning, Inc.*, PR 06-059 [January 28, 2008]).

Labor Law § 195 (5) requires an employer to "notify his employees in writing or by publicly posting the employer's policy on ...vacation," and Labor Law § 198-c requires "any employer who is party to an agreement to pay or provide benefits . . . within thirty days after such payments are required to be made." Forfeiture of vacation pay upon termination must be specified in the employer's vacation policy or in an agreement with the employee *(Matter of Petition of Marc E. Hochlerin and Ace Audio Video, Inc. [T/A Ace Audio Visual Co., and Ace Communication]* PR 08-055 [March 25, 2009]), and forfeiture provisions must be explicit (*Fin. Planning, Inc.*). *See also, Yellow Book*, 23 AD3d at 522 (employees were not entitled to vacation pay upon termination under a policy that expressly stated "[n]o vacation time is accrued or payable if the [employee] is not employed as of July 1 following the calculation period") and *Paroli v Dutchess County*, 292 AD2d 513 (2nd Dept 2002), (an employee was entitled to vacation pay upon termination as the employer's benefit plan contained no qualifying language entitling employees to the benefit only if they were in "good standing").

We find that the Petitioners' vacation agreement with Claimant was expressed in its vacation policy, and not in Fairbank's June 14th email as that email did not constitute an agreement under Labor Law 198-c.

The June 14th email offered Claimant a starting salary of "$38,500 per year . . . [and] one week of vacation after the first six months of employment along with 8 holidays, a specified number of personal and sick days and other benefits that can be discussed and provided in a formal written offer letter." The email also stated that upon Claimant's "review and consideration" of these terms, another meeting could be scheduled and that Fairbank looked forward to Claimant's "response."

Petitioner's email was not an agreement with Claimant as it clearly stated that it was an offer that was subject to Claimant's review, consideration, and further discussion. Also, the email did not specify the amount of "personal and sick days and other benefits," that Claimant would receive, which demonstrates that the email was a general outline of Claimant's terms of employment that were subject to discussion, clarification, and final agreement. Fairbank's invitation to Claimant to respond to the email also shows that it was not an agreement.

Finally, Claimant testified that the email was a proposal and that negotiations occurred after it was sent. We find that Claimant's testimony that Fairbank's email was followed by negotiations was credible as her testimony was consistent with the wording of the email. However, we do not find that those negotiations resulted in an agreement for two weeks' vacation as Claimant maintained. Investigator Anderson's October 3, 2008 letter to Petitioners corroborates that only one week of vacation was agreed to.

Petitioners' vacation policy was posted in a conspicuous work location throughout Claimant's employment and clearly stated that vacation was forfeited upon termination of employment. Petitioner testified that he personally drafted the vacation policy and posted it prior to Claimant's employment; that it was posted during Claimant's employment; and that the policy was posted consistent with the manner in which he posted all relevant and legally required postings, that is, the policy was posted on a wall near an office restroom that all employees used.

Claimant disagreed with Petitioners and stated that there was no vacation policy ever posted at 2nd Nature's premises and that the first time she ever saw the vacation policy was at the hearing. It is possible that Claimant never saw the vacation policy, but 2nd Nature's obligation was only to post or provide written notification of the policy. As Petitioners posted the vacation policy in a conspicuous work location, likely to been seen by all affected employees, they fulfilled the notice requirement of Labor Law § 195 (5).

We also find that Petitioners' vacation policy explicitly excluded payment for accrued vacation upon termination of employment. Petitioners' vacation policy stated: "Earned or unearned vacation time is never redeemable as cash at the time of employment termination or any other time." Further, Fairbank credibly testified that all 2nd Nature's employees are salaried employees whose vacation is taken as accrued time off with no reduction in pay, and employees never receive additional pay for vacation accruals.

The Order's Finding That Petitioners Owe Claimant for Unpaid Dental Bills is Unreasonable.

Labor Law § 198-c (1) requires employers to provide benefits or wage supplements promised to employees within 30 days of their accrual, and under Labor Law § 198-c (2), "benefits or wage supplements" include reimbursement for health benefits. The Order includes a claim for unreimbursed dental bills in the amount of $346.00, which amount for the dental bills was earlier confirmed in the October 3, 2008 letter from DOL investigator Anderson to Petitioners.

We find that Petitioners have met their burden to show that the Order covering these dental bills is unreasonable.

Petitioner described the dental benefits offered by 2nd Nature and the process by which he informed Claimant of the availability, benefits, and costs of these benefits. The Excellus plan included a dental benefit that covered only accidental damage to one's natural teeth. Participation in this benefit required that an employee check a box labeled "dental" on the medical insurance application and designate whether the coverage desired was individual, family, two-person, or individual and children. This benefit had a co-pay of $25 but did not have a separate premium cost.

Petitioner also explained that 2nd Nature offered the more expansive Plan 15, which required an employee to complete a separate enrollment form and to pay a premium of approximately $8 a pay period.

By Petitioner's June 15th email, Claimant was informed of Plan 15's premium cost, and that it was shared by 2nd Nature. Attached to the email was a Plan 15 summary that included the plan's benefits, deductibles, and reimbursements. Separately attached was an Excellus plan summary that described its benefits, deductibles, reimbursements and its dental benefit.

Neither one of the plans' enrollment forms was attached to the email. However, both were available to Claimant upon request. Claimant requested the Excellus plan enrollment form, and may have mistakenly thought that she was covered for Plan 15's dental benefits by checking dental coverage on the Excellus plan form. However, such a mistake by Claimant is not a basis for finding that Petitioners violated the Labor Law.

Claimant's testimony that the Excellus card provided her with a reasonable basis to assume that she was entitled to Plan 15's full dental coverage does not persuade us that Petitioners agreed to provide her with Plan 15's coverage. Claimant should have been aware that the Excellus card did not entitled her to the Plan 15's benefits as that plan was not referred to on the medical insurance card. Though she may have been confused by the dental option of the Excellus plan enrollment form, we find that Petitioners sufficiently informed her of the existence of Plan 15, and it was incumbent upon her to enroll in the correct plan. Because she did not request an enrollment form for Plan 15, Petitioners did not provide it to her.

Our findings are also supported by evidence that Respondent adduced. Claimant asserted that when she received her Excellus card, but did not receive a separate dental insurance card, she nonetheless believed that she had dental coverage. However, her medical insurance card states "please make sure you advise your medical care provider of the three letters before your subscriber identification number," but makes no reference to dental care. Also, the card states: "This is you identification card. Carry it with you always and present it to the hospital or doctor whenever you receive medical services." It makes no reference to dentists.

Further, it is not certain that Claimant's dental bills would have been covered by Plan 15, and if covered, to what extent. Claimant was unsure what procedures she had during her employment, though she believed the charges were for x-rays, prophylaxis, cleaning and for a T.M.J exam and diagnosis. Plan 15 reimburses only 80% of the cost of certain preventive and basic services, and includes reimbursement for x-rays and cleaning. But the plan does not specifically mention coverage for TMJ exams or diagnosis.

We note that the Order specifies only a total amount due for vacation, dental, and miscellaneous expenses and does not indicate how the total is to be allocated among the three categories. While the Order can logically be construed, as discussed previously, to include $346 for dental bills, the Order does not identify the procedure or indicate the cost of

each dental procedure for which it seeks payment. Without such specificity, the Order is unreasonable or invalid as it does not adequately allow Petitioners to ascertain whether and what amounts Plan 15 may have reimbursed if Petitioners were otherwise liable for Claimant's dental bills.

The Order's Finding That Petitioners Owe Claimant Miscellaneous Business Expenses is Unreasonable.

The Order directs payment as supplemental wages for expenses that Claimant claimed that she incurred. As mentioned above, the Order does not specify how much of the total Order is attributable to any of its claims. However, Investigator Anderson's October 3, 2008 letter to Petitioner stated that "The total of the expenses are $32.28." There is no dispute that Petitioner's paid the $32.28 after receipt of Ms. Anderson's letter.

While Claimant argues that she is entitled to reimbursement for expenses in the amount of $100, she provided Inspector Anderson with receipts for only $32.28. The Order is for $1,086.40, and Inspector. Anderson's letter clarifies that Petitioners owed $740.40 for one week vacation and $346.00 in dental bills, or a total of $1,086.40. Even though the Order makes a claim for "expenses," such expenses were satisfied by Petitioners' payment of the receipted expenses of $32.28, and the Commissioner apparently dropped the claim for $100 in miscellaneous expenses once the Petitioner paid the $32.28 receipted expenses, as any added expenses would exceed the Order's $1,086.40 claim.

Moreover, even if the Order demands payment for Claimant's expenses beyond $32.28, Petitioners met their burden of showing that the Order is unreasonable. Petitioners paid all business expenses that were receipted, and Petitioners have shown that Claimant did not incur any other expenses.

Conclusion

As the Board finds that the Order unreasonable in its entirety, there is no sum due that accrues interest, and further, as the Board finds that the Petitioners did not violate the Labor Law, the civil penalty is also revoked.

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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Petition is granted; and

2. The Order to Comply with Labor Law Article 6, dated January 20, 2009, is revoked in it its entirety.

Anne P. Stevason, Chairman

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 27, 2011.