STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: RUTH SULLIVAN AND TLC MOVING & STORAGE, INC., Petitioners, To Review Under Section 101 of the Labor Law: Two Orders to Comply with Article 6 and an Order Under Articles 6 and 19 of the Labor Law, all dated August 24, 2009, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 09-270 RESOLUTION OF DECISION

APPEARANCES

Cullen and Dykman, LLP (Joseph Miller and Thomas B. Wassel of Counsel), for petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates of Counsel), for the respondent.

WITNESSES

Ruth Sullivan and Asaf Sharon, for petitioners. Jeremy Kuttruff, Senior Labor Standards Investigator, for respondent.

WHEREAS:

The petition in this matter was filed with the Industrial Board of Appeals (Board) on September 28, 2009, and amended on February 11, 2011. The amended petition seeks review of three orders issued by the respondent Commissioner of Labor (Commissioner) against petitioners Ruth Sullivan and TLC Moving & Storage, Inc. (together, petitioners) on August 24, 2009. Upon notice to the parties, a hearing was held on April 21, 2011 in New York, New York before J. Christopher Meagher, Member of the Board and the Board's designated Hearing Officer in this proceeding. Counsel for the Commissioner and the senior investigator for the Department of Labor (DOL) participated in the hearing by videoconference from the Board's Albany, New York office. Each party was afforded a full

opportunity to present documentary evidence, examine and cross-examine witnesses, make statements relevant to the issues, and file post-hearing briefs. The first order (wage supplements order) directs petitioners to pay to the Commissioner wage supplements (expenses) owed claimant employee Itamar Rosen for the period December 3, 2007 to December 24, 2007 in the amount of $414.00, with interest continuing thereon at the rate of 16% to the date of the order in the amount of $105.26, and a civil penalty of $414.00, for a total amount due of $933.26.

The second order (wage order) directs petitioners to pay wages owed claimant for the same period in the amount of $2,700.00, with interest continuing thereon at the rate of 16% to the date of the order in the amount of $720.79, and a civil penalty of $2,700.00, for a total amount due of $6,120.79.

The third order (penalty order) directs petitioners to pay a civil penalty of $500.00 for failure to maintain and/or furnish true and accurate payroll records for each employee (count 1), and $500.00 for failure to notify employees in writing or post notice of a fringe benefits policy (count 2), for a total amount due of $1,000.00. The Commissioner withdrew count 2 of the order at the hearing.

The amended petition asserts that the orders should be reversed because: (1) as a dispatcher at petitioners' moving company claimant did not incur out-of-pocket expenses in the course of his employment and his claim for reimbursement of expenses is baseless and false; (2) claimant was paid all wages owed him for the period of the claim, and; (3) petitioners maintained proper payroll records.

For the following reasons, we find that petitioners met their burden to establish that claimant was not owed expenses for the period of the claim and revoke the wage supplements order. We affirm the wage order to the extent of finding that claimant was owed $100.00 wages for the period of the claim and modify the wages, interest, and civil penalty in the order accordingly. We affirm count 1 of the penalty order assessing petitioners a $500 civil penalty for failure to maintain/furnish true and accurate payroll records for each employee but modify the order to vacate count 2 since it was withdrawn at hearing.

SUMMARY OF EVIDENCE

DOL's Investigation

The investigative file in evidence reveals that on March 23, 2008, claimant Itamar Rosen (claimant or Rosen) filed a claim with DOL against petitioners for unpaid wages accrued during the period December 3, 2007 to December 24, 2007. The claim form stated that Rosen was hired by petitioners as a dispatcher in July, 2007 and his last day worked was December 22, 2007. Claimant stated that he worked 6 days and 40 hours per week during the payroll weeks ending December 8, 15, and 22, 2007; his rate of pay was $900 per week; and he was owed $2,700 for the period of the claim.

On July 13, 2008, a claim for unpaid wage supplements accrued during the period December 1, 2007 to December 22, 2007, was filed on behalf of the claimant.[1] The claim form stated that Rosen was owed $414 in unreimbursed expenses, including a $250 cell phone bill; $108 gas money paid to a truck driver; $36 toll money paid to a foreman who went to a job; and $20 for a taxi to pick up a truck from service. Claimant did not submit receipts for the expenses listed in the claim.

Senior Labor Standards Investigator (SLSI) Jeremy Kuttruff (Kuttruff) testified that he issued petitioners a collection notice on September 2, 2008 advising that claimant had filed wage and wage supplement claim(s) against them, the details of the claim(s), and that if petitioners agreed with the claim(s) they should remit payment to the Commissioner within ten days. The notice further advised that if petitioners disagreed they must respond in writing stating the basis of their dispute and submit a copy of daily and weekly hours worked, payroll records, copies of cancelled checks, and a copy of any company policy concerning expense reimbursement to substantiate their position. In response to the notice, an attorney for petitioners informed DOL that claimant had been paid all wages and expenses owed and had left his employment owing petitioners money for a theft committed during his employment. By letter dated October 2, 2007, Kuttruff responded that the allegations concerning misconduct and money owed by the claimant were legally insufficient reasons to withhold payment. The letter reiterated that if petitioners disagreed with the claim(s) they must submit contemporaneous payroll records, in the absence of which DOL would have no choice but to find that claimant was owed the wages and expenses claimed. Kuttruff advised that failure to submit records or remit payment within ten days would result in issuance of an order to comply, including additional interest and penalties.

Petitioners did not submit payroll records during the investigation and wage calculations were therefore based solely on the written claims filed by the claimant. Investigator Kuttruff testified that no one from DOL had spoken with Rosen concerning the allegations in the claims. Based on DOL's investigation, the Commissioner issued petitioners the orders under review on August 24, 2009.

In support of the civil penalties assessed in the orders, Kuttruff testified that he completed an investigative report titled "Background Information – Imposition of Civil Penalty" that sets forth factors considered in assessment of the penalty. He arrived at the 100% penalty recommended for the wage and supplements violations by looking at how long petitioners had been in business, the amount of money found owed, and how long the claimant had been waiting to be paid. The penalty for these violations could have been as high as 200% of the underpayment. The records violation was based on petitioners' failure to maintain and/or furnish payroll records that DOL had requested concerning the hours worked and wages paid the claimant during the period of the claim. Kuttruff considered a $500 penalty reasonable for this violation because it was petitioners' first offense and was designed to encourage the employer to maintain true and adequate records required by the Labor Law. The penalty could have been as high as $1,000.

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[1] The same claim for unreimbursed expenses was listed on Rosen's wage claim filed on 3/23/08. The information was crossed out and replaced by the wage supplements claim filed on 7/23/08.

Claimant did not testify at the hearing.

Petitioners' Evidence

Petitioner Ruth Sullivan (petitioner or Sullivan) testified that she is President of TLC Moving & Storage, Inc. a moving and storage business located in the Bronx, New York. Her duties include overseeing the day-to-day operations of the company, including storage, sales, payroll, and hiring and firing employees. Sullivan knew claimant through a mutual friend and hired him as a "dispatcher" on July 16, 2007 because Rosen needed a job and the company needed a dispatcher at the time.

Petitioner testified that Rosen's duties involved dispatching the trucks in the morning, receiving them at night, handling contracts, sending out the employees, and handling packing materials. Since claimant performed his duties in the office, he had no reason to incur expenses for gas or tolls himself and had no responsibility to advance or reimburse other employees for these out-of-pocket expenses. Company practice was for employees to go to petitioners' Operations Manager, Asaf Sharon (Sharon), for their expenses before going out on a job or for reimbursement upon their return. Sullivan recalled one occasion that Rosen went on a job as a helper, but not as a dispatcher, and was reimbursed for his tolls. As the dispatcher, claimant communicated with employees in the field on the office telephone. Sullivan never gave him permission to use his personal cell phone for work related purposes and never agreed to reimburse him for such use. Finally, Sullivan testified that claimant would have no reason to take a taxi to a nearby service station where the trucks were serviced because there were company vehicles to transport employees to and from the site.

Sharon testified that he manages the company's operations and works with the dispatcher and foremen on a day-to-day basis. Sharon corroborated Sullivan's testimony concerning claimant's duties and the company's reimbursement practices. Sharon testified that there was no reason for claimant to incur any of the expenses listed in the claim.

Sullivan testified that she and Rosen signed an employment agreement on July 16, 2007 providing that his starting salary would be $550 per week. After two weeks she raised him to $800 per week. The company ordinarily paid its employees bi-weekly. However, at Rosen's request, Sullivan often paid him weekly and gave him salary advances because he had financial problems and needed the money. Sullivan explained that claimant was "an exception because we paid bi-weekly, but because [claimant] never had money and always needed help, he always got more money, he always got, almost every week, money instead of bi-week." Sharon corroborated Sullivan's testimony that Rosen was paid at the rate of $800 per week and was given advances.

Sullivan testified that she issued paychecks to Rosen on December 5, 2007 in the amount of $1,500 and December 21, 2007 in the amount of $1,500 and they were full payment of his wages for the period of the claim. The cancelled paychecks were signed by Rosen and submitted into the record. Sullivan testified that each time she issued an employee a paycheck she recorded the date, amount, and what the payment was for on a stub in the payroll checkbook and gave the checkbook and stubs to petitioners' accountant to record the data on a spreadsheet in the company's computer. Petitioners submitted the spreadsheet showing claimant's payment history for the period July 16, 2007 to December

21, 2007. Sullivan testified that the document was maintained in the regular course of business; it was the regular practice of the company to maintain this type of record; and the information contained in it was recorded at or about the time of payment to the employee. Sullivan explained that she made a search for the stubs that were in the company's storage but the storage had been moved and she couldn't find them.

Petitioners' spreadsheet shows the pay period, payroll week number, salary paid per week, check number, check date, and amount of payment for each of 23 weeks during claimant's employment. The data is consistent with Sullivan's testimony concerning claimant's starting salary rate, his raise to $800 per week, and that he was paid on a weekly or bi-weekly basis. Also submitted were the cancelled paychecks for the remainder of Rosen's employment. The dates and amounts of the checks coincide with those entered on the spreadsheet.

Regarding the time frame of the claim, the spreadsheet shows a payment of $1,500 on December 5, 2007 opposite the pay period for December 3 to December 8, 2007; no payment opposite the pay period for December 10, 2007 to December 15, 2007; and a $1,500 payment opposite the pay period for December 17, 2007 to December 21, 2007. Sullivan testified that the first payment was for the first week in the claim period, plus an advance of future wages that claimant "needed", and the second was a bi-weekly payment for the last two weeks.

Responding to petitioners' records submitted at the hearing, investigator Kuttruff testified that petitioners had not submitted the records to DOL during its investigation. Even if they had, it would not have resulted in a different determination, as the records did not contain contemporaneous records of the daily and weekly hours worked by the claimant to correspond with the cancelled checks entered into evidence. Kuttruff testified that the checks dated December 5 and 21, 2007 did not indicate the pay periods covered by those amounts and that cancelled checks alone do not substantiate that wages have been paid. According to Kuttruff, the spreadsheet did not constitute a contemporaneous time record required by the Labor Law because it was not maintained during claimant's employment and did not state the daily hours worked. On cross examination, Kuttruff acknowledged that he had no evidence that the spreadsheet was not made contemporaneously with the payments recorded in it.

GOVERNING LAW

A. Standard of Review and Burden of Proof

When a petition is filed, the Board reviews whether an order issued by the Commissioner of Labor is "valid and reasonable" (Labor Law § 101[1]). Any objections not raised in the petition shall be deemed waived (*Id.* § 101[2]). The Labor Law provides that an order of the Commissioner shall be presumed "valid" (*Id.* §103 [1]). If the Board finds that the order, or any part thereof, is invalid or unreasonable it shall revoke, amend, or modify the same (*Id.* § 101[3]).

A petition must state "in what respects [the order on review] is claimed to be invalid or unreasonable" (*Id.* § 101[2]). Pursuant to Rule 65.30 of the Board's Rules, "[t]he burden

of proof of every allegation in a proceeding shall be upon the person asserting it" (Board's Rules of Procedure and Practice at 12 NYCRR § 65.30). The burden is by a preponderance of evidence (State Administrative Procedure Act § 306[1]).

It is therefore petitioners' burden in this case to establish by a preponderance of evidence that the orders issued against them by the Commissioner on August 29, 2009 are invalid or unreasonable for the reasons stated in the petition.

B. Benefits and Wage Supplements

Labor Law § 198-c concerning payment of benefits or wage supplements provides:

> "1. In addition to any other penalty or punishment prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements to employees or to a third party for the benefit of employees and who fails, neglects, or refuses to pay the amounts necessary to provide such benefits or furnish such supplements within thirty days after such payments are required to be made, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one hundred ninety-eight-a of this article. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall be guilty of a misdemeanor.
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> 2. As used in this section, the term "benefits or wage supplements" includes, but is not limited to, reimbursement for expenses; health, welfare, and retirement benefits; and vacation, separation or holiday pay."

C. Recordkeeping Requirements

Article 19 of the Labor Law, known as the "Minimum Wage Act," defines "[e]mployee," with certain exceptions not relevant to this appeal, as including "any individual employed or permitted to work in any occupation (Labor Law § 651 [5])." Labor Law § 661 requires employers to maintain payroll records for employees covered by the Act and to make such records available to the Commissioner:

> "Every employer shall keep true and accurate records of hours worked by each employee covered by an hourly minimum wage rate, the wages paid to all employees, and such other information as the commissioner deems material and necessary, and shall, on demand, furnish to the commissioner or [her] duly authorized representative a sworn statement of the same. Every employer shall keep such records open to inspection by the commissioner or [her] duly authorized representative at any reasonable time. . ."

The Commissioner's regulations implementing Article 19 provide at 12 NYCRR § 142-2.6:

"(a) Every employer shall establish, maintain and preserve for not less than six years weekly payroll records which shall show for each employee:
(1) name and address;
(2) social security number;
(3) wage rate;
(4) the number of hours worked daily and weekly, including the time of arrival and departure for each employee working a split shift or spread of hours exceeding 10;
(5) when a piece-rate method of payment is used, the number of units produced daily and weekly;
(6) the amount of gross wages;
(7) deductions from gross wages;
(8) allowances, if any, claimed as part of the minimum wage."

C. DOL's Calculation of Wages in the Absence of Adequate Employer Records

An employer's failure to keep adequate records does not bar employees from filing wage complaints. Where employee complaints demonstrate a violation of the Labor Law, DOL must credit the complaint's assertions and relevant employee statements and calculate wages due based on the information the employee has provided. The employer then bears the burden of proving that the disputed wages were paid. Labor Law § 196-a provides that employers who keep inadequate records "shall bear the burden of proving that the complaining employee was paid wages, benefits, and wage supplements" (*Angello v Natl. Fin. Corp.*, 1 AD3d 850, 853-54 [3d Dept 2003]). As the Appellate Division stated in *Matter of Mid-Hudson Pam Corp. v Hartnett*, 156 AD2d 818, 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 calculations to the employer."

In *Anderson v Mt. Clements Pottery Co.*, 328 U.S. 680, 687-688 [1949], superseded on other grounds by statute, the U.S. Supreme Court long ago discussed the fairness of relying on employee statements where the employer failed to keep adequate records:

> "[W]here the employer's records are inaccurate or inadequate....[t]he solution...is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act."

Citing to *Anderson v Mt. Clemens Pottery Co.*, the Appellate Division in *Mid-Hudson Pam Corp. v Hartnett*, at 821, agreed:

> "The public policy of providing protection to workers is embodied in the statute which is remedial and militates against creating an impossible hurdle for the employee.... Were we to hold otherwise, we would in effect award petitioners a premium for their failure to keep proper records and comply with the statute. That result should not pertain here."

FINDINGS

Petitioners Met Their Burden to Establish That Claimant Was Not Owed Wage Supplements

We find that petitioners met their burden to establish that claimant was not owed "reimbursement for [the] expenses" listed in the claim (Labor Law § 198-c [2]). Petitioner Sullivan credibly testified that because claimant performed his duties in the office he had no reason to incur expenses for gas or tolls himself and had no responsibility to advance or reimburse other employees for these out-of-pocket expenses. Company practice was for petitioners' Office Manager, Sharon, to advance employees their expenses before they went out on a job or to reimburse them upon their return. As the dispatcher, claimant communicated with employees in the field on the company's office telephone. Petitioner never authorized claimant to use his personal cell phone for work related purposes and never agreed to reimburse him for such use. Finally, claimant had no reason to incur taxi charges to pick up a truck from service because petitioners had company vehicles to transport employees to and from the shop where the trucks were serviced.

Petitioner's testimony was specific, credible, and corroborated by Sharon. Claimant did not submit receipts for any of the expenses listed in the claim and did not testify at hearing to rebut petitioners' evidence that he did not incur the expenses claimed and/or was not owed reimbursement for them. In the absence of such proof, we find the record establishes that petitioners were not "party to an agreement to pay" and did not "fail to pay" claimant the wage supplements listed in the claim (Labor Law § 198-c [1]). We revoke the wage supplements order.

The Wage Order Is Affirmed To The Extent Of Finding That Claimant Is Owed $100 For The Period Of The Claim

In the absence of accurate records required by the Labor Law, the Commissioner may draw reasonable inferences and calculate unpaid wages based on the "best available evidence" drawn from employee statements (*Matter of Mid-Hudson Pam Corp. v Hartnett,* at 821). Where an employer claims it has paid an employee for work performed, it must present sufficient evidence either of the "precise wages" paid or evidence to "negative the reasonableness of the inference to be drawn from the employee's evidence" (*Doo Nam Yang v ACBL Corp.,* 427 F. Supp.2d 327, 331 [SDNY 2006] [quoting *Anderson v Mt. Clemens Pottery Co.* at 821]); *Matter of Gattegno,* PR 09-032 at p.8 [December 15, 2010]).

We find that petitioners met their burden to establish that claimant was paid at the rate of $800 per week and should be credited with two payments issued claimant on December 5 and 21, 2007 towards the wages owed for the period of the claim. However, as the second payment was a bi-weekly payment for the last two weeks of the claim, we affirm

the wage order to the extent of finding claimant is owed $100 wages and modify the wages, interest, and civil penalty in the order accordingly.

Petitioner credibly testified that she hired claimant at the rate of $550 per week, raised him to $800 per week after two weeks, and paid him on a weekly or bi-weekly basis throughout his employment. Petitioner issued claimant a paycheck on December 5, 2007 in the amount of $1,500 for the first week of the claim, including an advance of future wages, and a bi-weekly paycheck on December 21, 2007 in the amount of $1,500 for the last two weeks. The paychecks were signed by Rosen and submitted into the record, along with the cancelled paychecks for claimant's entire employment. Petitioners submitted a spreadsheet of claimant's wage payments, contemporaneously recorded by the company's accountant, showing the pay period, payroll week number, salary per week, check number, check date, and amount of payment for each pay period during claimant's employment. The dates and amounts of claimant's cancelled paychecks coincide with those recorded by the accountant. The data on the spreadsheet corroborates petitioner's testimony that claimant was paid $800 per week, was paid on a weekly or bi-weekly basis, and was paid $1,500 on December 5, 2007 for the first week of the claim and $1,500 on December 21, 2007 for the last two weeks. Additionally, Sharon corroborated Sullivan's testimony that claimant was paid at $800 per week and was given advances of future wages.

Taken together, we find petitioners' evidence credible and sufficient to establish the "precise wages" paid for the work performed and "to negative the inference" supporting the Commissioner's determination. The claimant did not testify at hearing to contradict the authenticity, accuracy, or completeness of petitioners' records or the testimony of their witnesses establishing that he was paid $800 per week and issued two payments towards the wages owed for the period of the claim. Since the Commissioner's calculation is an approximation drawn solely from the claimant's written claims, the calculation falls in the face of petitioners' precise and accurate proof.

The Commissioner argued in closing that petitioners' records were insufficient because the claimant's paychecks lacked wage statements, pay stubs, or any reference on the checks proving that the checks covered the hours worked by the claimant during the claim period from December 3, 2007 through December 22, 2007. In the circumstances of this case, however, we find petitioners' testimony and records sufficient to correlate the payments to the *pay periods* during which claimant worked those hours and thereby establish he was paid for his work performed.

Finally, petitioners' evidence shows that claimant was paid in full for the first week of the claim but was paid only $1,500 of the $1,600 owed (at the rate of $800 per week) for the last two weeks. While petitioner maintained that claimant was given an advance of future wages and was overpaid for the total period of his employment at the company, claimant was not paid full wages at the agreed rate for the work he performed during the second bi-weekly pay period of the claim. We affirm the wage order to the extent of finding that claimant was owed $100 for the period of the claim and modify the wages, interest, and civil penalty in the order accordingly (*Matter of Michael Fischer,* PR 06-099 [April 23, 2008] [failure to pay full wages to balance off or recoup prior loan to employee not permitted by Labor Law § 193]).

C. Civil Penalties

Labor Law § 218 provides that once the Commissioner determines that an employer has violated Article 6 or 19 of the Labor Law, she shall issue to the employer an order directing compliance therewith, which shall describe with particularity the nature of the violation. The statute also provides:

> "In addition to directing payment of wages, benefits or wage supplements found to be due, such order, if issued to an employer who previously has been found in violation of those provisions [of the Labor Law], rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount equal to double the total amount found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, 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."

Petitioners did not submit evidence challenging the 100 % civil penalty assessed in the wage order. The Board finds that the considerations and computations the Commissioner was required to make in connection with the imposition of the civil penalty in the wage order are valid and reasonable in all respects.

Petitioners failed to furnish requested payroll records to the Commissioner during the investigation and the records produced at hearing do not contain certain data required by 12 NYCRR § 142-2.6. The Board finds that the considerations and computations the Commissioner was required to make in connection with the imposition of the $500 civil penalty assessed in count 1 of the penalty order are valid and reasonable in all respects. We modify the order to vacate count 2 since it was withdrawn at hearing.

D. Interest

Labor Law § 219(1) provides that when the Commissioner determines that wages are due, the order directing payment shall include "interest at the rate of interest then in effect as prescribed by the superintendent of banks 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 percent per centum per annum."

Petitioner did not challenge the assessment of interest made by the wage order. The Board finds that the considerations and computations required to be made by the Commissioner in connection with the interest set forth in the order are valid and reasonable in all respects.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage supplements order is revoked;

2. The wage order is modified to reduce the amount of wages due and owing to $100, and to reduce the interest and civil penalty on such amount proportionally, and in all other respects is affirmed, and;

3. The penalty order is affirmed but modified to delete count 2, and;

4. The petition for review be, and the same hereby is, otherwise denied.

Anne P. Stevason, Chairperson

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
May 30, 2012.

Petitioner did not challenge the assessment of interest made by the wage order. The Board finds that the considerations and computations required to be made by the Commissioner in connection with the interest set forth in the order are valid and reasonable in all respects.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage supplements order is revoked;

2. The wage order is modified to reduce the amount of wages due and owing to $100, and to reduce the interest and civil penalty on such amount proportionally, and in all other respects is affirmed, and;

3. The penalty order is affirmed but modified to delete count 2, and;

4. The petition for review be, and the same hereby is, otherwise denied.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
June 4, 2012.