

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

CHRISTOPHER MANGOLD and MANGOLD
PALLET, INC. (T/A MANGOLD GROUP),

Petitioners,

: DOCKET NO. PR 09-156

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6 and an Order
under Article 19 of the Labor Law, both dated
April 15, 2009,

: RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Christopher Mangold, *pro se*, for Petitioners.

Maria L. Colavito, Counsel, New York State Department of Labor, Benjamin A. Shaw of
Counsel, for Respondent.

WHEREAS:

Petitioners Christopher Mangold and Mangold Pallet, Inc.(Petitioners) filed a petition
with the Industrial Board of Appeals (Board) challenging the civil penalties assessed against
them in an Order to Comply with Article 6 of the Labor Law (“Wage Order”) and an Order
under Article 19 of the Labor Law (“Penalty Order”) (together, “Orders”) issued against them
by the Commissioner of Labor (Commissioner) on April 15, 2009,¹ and stating that

¹ The Wage Order finds Petitioners failed to pay an employee wages for the period October 27, 2008 to
November 21, 2008 and directs that \$1,920.00 be paid to the Commissioner for the wages due, with \$122.04
continuing interest thereon at the rate of 16% calculated to the date of the Wage Order. The Commissioner also
assessed a civil penalty of \$1,920.00 in the Wage Order for a total of \$3,962.04. The single count of the Penalty
Order finds that Petitioners
violated Labor Law § 661 and 12 NYCRR part 142-2.6 by failing to keep and/or furnish true and accurate
employee payroll records for the period October 27, 2008 through November 21, 2008.

Petitioners have paid the wages and interest found due in the Wage Order. Petitioners seek Board review and full abatement of the civil penalties.

The Board served the petition on the Commissioner on July 2, 2009, with notice that a response should be filed within 35 days of that date, in accordance with the Board's Rules of Procedure and Practice ("Rules").

By letter dated November 25, 2009, the Board notified the Commissioner that neither an answer nor a request for an extension of time to answer had been filed (Rule 65.5 [g]), and that "[f]ailure to file an answer to the petition by December 16, 2009 may constitute a waiver of the right to further participation in the proceeding" (Rules § 65.14).

Having received no response to its July 2, 2009 or November 25, 2009 correspondence, by letter dated December 21, 2009, the Board informed the Commissioner that she had waived her right to further participation in this proceeding unless a motion establishing good cause for the failure to answer was brought within 30 days. The Commissioner again failed to respond and, therefore, we confirm our finding that the Commissioner is in default and has waived her right to further participation in this matter.

Petitioners, by a signed and notarized statement, assert that they have fully cooperated with the Department of Labor's investigation leading to the Orders, have paid the wage claim and interest, and that they have no history of any previous violations. Based on those facts, we find that the civil penalties in the Wage Order and the Penalty Order should be revoked in their entirety.


NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Wage Order is modified to revoke the full amount of the civil penalty; and
2. The Penalty Order is revoked in its entirety; and
3. The Petition is granted.


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 Albany, New York, on
December 15, 2010.