

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MITCHELL WOLFF,

Petitioner,

To Review Under Section 101 of the Labor Law:
Three Orders to Comply with Article 6 of the Labor
Law and an Order to Comply with Article 19 of the
Labor Law, all dated November 9, 2010,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 10-006

RESOLUTION OF DECISION

APPEARANCES

Stark & Stark, P.C., Craig S. Hilliard of Counsel, for Petitioner.

WHEREAS:

Respondent Commissioner of Labor (Commissioner) issued three Orders to Comply with Article 6 of the New York Labor Law and an Order to Comply with Article 19 of the New York Labor Law (together, Orders) against Joel S. Hoffman and Mitchell Wolff and Stratford Business Corporation and the Nevele Hotel, LLC, dated November 9, 2009.¹

¹ The first Order to Comply with Article 6 finds that Petitioner failed to pay two employees wage supplements in accordance with § 198-c of the New York State Labor Law for the period January 1, 2003 to November 11, 2008 for the first employee, and for the period February 22, 2009 to July 13, 2009 for the second employee and directs that \$4,432.00 be paid to the Commissioner for the wages due, with \$442.97 continuing interest thereon at the rate of 16% calculated to the date of the Order. The Commissioner assessed a penalty of \$8,864.00 in the Order for a total of \$13,738.97. The second Order to Comply with Article 6 finds that Petitioner failed to pay tip appropriations payable under § 196 of the New York State Labor Law to 37 employees for various periods in 2009 and directs that \$10,743.55 be paid to the Commissioner for the wages due, with \$459.06 continuing interest thereon at the rate of 16% calculated to the date of the Order. The Commissioner also assessed a civil penalty of \$21,487.10 in the Order, for a total of \$32,689.71. The third Order to Comply with Article 6 finds that Petitioner made illegal pay deductions under § 193 of the New York State Labor Law to three employees for various periods in 2009 and directs that \$145.00 be paid to the Commissioner for the wages due, with \$10.00 continuing interest thereon at the rate of 16% calculated to the date of the Order. The Commissioner also assessed a civil penalty of \$290.00, for a total of \$445.99. The Order to Comply with Article 19 finds that Petitioner made underpayments to 94 employees for various periods in 2009 under the minimum Wage Order of Title 12 NYCRR Part No. 137, 138 and 142. The Commissioner directs payment \$74,371.80 for wages due, with \$4,133.50 in continuing interest thereon at the rate of 16% calculated to the date of the Order. The Commissioner also assessed a civil penalty of \$148,743.60 in the Order for a total of \$227,248.90.

The sole Petitioner here, Mitchell Wolff, filed a petition for review of the Orders on January 11, 2010. The Board served the petition on the Commissioner on January 28, 2010, with notice that a response should be filed in accordance with the Board's Rules of Procedure and Practice ("Rules") § 66.5.

Rule § 66.5 (a) states that "The Commissioner of Labor shall, within thirty (30) days after receipt of the Petition, file an answer with the Board or move with respect to the Petition." The Commissioner did not file a response, and by letter dated October 21, 2010, the Board informed the Commissioner that no answer or motion had been filed and that the failure to file a response constituted a waiver of the Commissioner's right to further participate in the proceeding "unless a motion brought within 30 days of your receipt of this letter establishes good cause for the failure to file an answer." The Board received no response to its October 21, 1010 letter.

We affirm the finding that the Commissioner has waived her right to further participate in Petitioner's appeal proceeding. As the Commissioner has failed to deny any of the allegations in the petition, we find the factual allegations admitted for the purposes of the instant review.

Petitioner, by a signed and notarized statement, asserts that the Orders "should not have named [him] because [he] was not an employer pursuant to applicable law. He further asserts that he and Joel S. Hoffman created Stratford Business Corporation as the property management company for real estate holdings owned by them, including the Nevele Hotel. In October 2005, Hoffman and Petitioner entered into agreements reflecting the sale of all of Petitioner's interest in the profits, incomes, distribution, dividends and losses of their businesses, except for a 1% interest that Petitioner retained. A "Redemption Agreement" signed by them states that Hoffman would have exclusive control over their businesses, and that "Wolff shall receive a full indemnification from Hoffman for all past . . . liabilities and claims relating to or arising out of the Business, the Owners, or the Properties."

Petitioner also states that he had "no decision-making authority, and no role in the operation of the Businesses, between the date [he] signed the Redemption Agreement (October 2005) up through and including the date Order to Comply No. 09-01067 was entered."

Based on these facts, we grant Petitioner's motion to strike Mitchell Wolff from the Orders.

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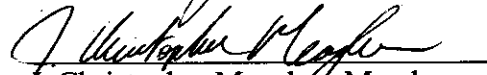
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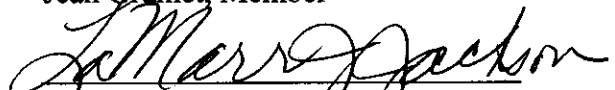
NOW, THEREFORE IT IS HEREBY RESOLVED THAT:

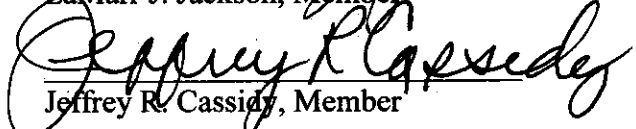
The Petition of Mitchell Wolff is granted and his name is stricken from the Orders to Comply.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member


LaMarr J. Jackson, Member


Jeffrey R. Cassidy, Member

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