STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: JOSEPH P. BARCHITTA, Petitioner, 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 September 27, 2010, - and - JOSEPH BARCHITTA AND MICHAEL CHRISTOPHER CONSTRUCTION CORP., Petitioners, 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 June 2, 2011, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NOS. PR 10-375 and PR 11-241 RESOLUTION OF DECISION

APPEARANCES

Eric Nelson, Esq., for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Benjamin A. Shaw of counsel), for respondent.

WITNESSES

Joseph P. Barchitta, for petitioners.

Jose J. Cruz, Jaime Cruz Garcia, Eduardo Cruz, Jose Colin Mercado, and Senior Labor Standards Investigators Joanna Cabrera and Lori Roberts, for respondent.

WHEREAS:

On December 1, 2010 and July 28, 2011, petitioner Joseph P. Barchitta filed petitions with the Industrial Board of Appeals (Board) seeking review of two sets of orders issued by the Commissioner of Labor (Commissioner) on September 27, 2010 (PR 10-375) and June 2, 2011 (PR 11-241). Petitioner also sought review on behalf of Michael Christopher Construction Corp. in PR 11-241.

The petitions were consolidated for hearing pursuant to Board Rule 65.44 and hearings were held on May 23 and September 17, 2013 before J. Christopher Meagher, Member of the Board and the Board's designated Hearing Officer in these proceedings. 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 orders under review in PR 10-375 include a wage order directing compliance with Article 6 and payment to the Commissioner of $28,600 in unpaid wages due and owing six claimant employees during the period December 7, 2007 to May 22, 2008, together with interest continuing thereon at the rate of 16% to the date of the order in the amount of $10,880.77, and a civil penalty of $57,200, for a total amount due of $96,680.77. A second penalty order under Article 19 assesses petitioner civil penalties of $1,000 for failure to keep and/or furnish required payroll records during the period December 7, 2007 to May 22, 2008, and $1,000 for failure to provide wage statements to employees with every payment of wages during the same period, for a total penalty of $2,000.

The petition in PR 10-375 alleges that petitioner: (1) never owned a business at the address listed in the orders; (2) did not own a business during that time period December, 2007 to May, 2008; (3) was employed as a Carpenter/Supervisor by "SAI Contracting – owned by Bob Maletta" during the period covered by the claims, and; (4) does not owe wages or interest to the employees named in the orders.

The orders under review in PR 11-241 include a wage order directing compliance with Article 6 and payment by petitioner and Michael Christopher Construction Corp. to the Commissioner of $4,080 in unpaid wages due and owing claimant employee Raul Crespo during the period February 23, 2010 to March 25, 2010, together with interest continuing thereon at the rate of 16% to the date of the order in the amount of $970.26, liquidated damages in the amount of $1,020, and a civil penalty of $4,080, for a total amount due of $10,650.26. A second penalty order under Article 19 assesses petitioners a civil penalty of $500 for failure to keep and/or furnish required payroll records for the period February 23, 2010 to March 25, 2010.

The petition in PR 11-241 alleges that: (1) no one by the name of Raul Crespo has ever been employed by Michael Christopher Construction Corp., and; (2) during the time period referenced in the orders the company had no open contracts and there were no laborers employed.

SUMMARY OF EVIDENCE

The Wage Claims

On May 21, 2008, claimants Jose J. Cruz, Jaime Cruz Garcia, Eduardo Cruz, Jose Colin Mercado, Miguel Sicha, and Marco Mendietto filed claims with the Department of Labor (DOL) stating that they were employed as carpenters by petitioner at a job site at 161 North 4th Street in Brooklyn, New York and were owed a total of $28,600 in unpaid wages for construction work performed during the period December, 2007 to May, 2008 (PR 10-375).

On July 26, 2010, claimant Raul Crespo filed a claim with DOL stating that he was employed as a carpenter by petitioner and Michael Christopher Construction Corp. at a job site at 620 Foster Avenue in Brooklyn, New York and was owed $4,080 in unpaid wages for construction work performed during the period February 23, 2010 to March 25, 2010 (PR 11-241).

Petitioners' Evidence

Petitioner Joseph P. Barchitta (petitioner) testified that he is a carpenter and building contractor and that the claimants in both cases worked for him as carpenters on various construction jobs in the New York City area between 2000 and 2010, either when he operated his own businesses or under his supervision when he worked as a carpentry foreman for other contractors.

Petitioner said he hired most of the claimants in PR 10-375 in 2000 and 2001 when he operated his own business and again in 2005 when he served as superintendent of carpentry for a contractor named Bob Maletta on a high-rise building at 60 Parkway Drive in Orange, New Jersey. Maletta stopped paying the crew near the end of 2006 or early 2007, however, and the job didn't end well: "He stopped paying us, kept promising to pay us to finish, so we were all in too deep, so we finished the job and he never paid us."

Petitioner then employed "everybody named in both cases" on and off for a year or so on jobs at 161 North 4th Street and 998 East 35th Street in Brooklyn, New York that were performed by a company he owned and operated called Michael Christopher Construction Corp. (Michael Christopher), and a second company called Double Edge Construction (Double Edge).[1] Petitioner was employed as superintendent of carpentry by the owner of Double Edge, Anthony Pignatano. Petitioner hired the claimants for both companies, supervised and assigned their work, controlled their schedules, kept track of their hours, had power of attorney to sign their paychecks, and paid them their wages.

Petitioner testified that Michael Christopher later did a job at 620 Foster Avenue in Brooklyn, New York and that he employed the claimant in PR 11-241, Raul Crespo, as a carpenter on that job. Petitioner and Michael Christopher went out of business on or about 2010 or 2011.

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[1] Petitioner said he was not familiar with "Miguel Sicha" by his real name but that Sicha might have worked for him on the various jobs under another name. Jose J. Cruz testified that he knew one of the claimants in PR 10-375 by his first name "Miguel." Eduardo Cruz confirmed that "Miguel Sicha" worked on the job at North 4th Street.

Petitioner asserted that he fully paid the claimants in both cases for their work on the North 4th Street and Foster Avenue jobs listed in their claims. Some of the claimants were paid in cash and some by check. As evidence of payment, petitioner submitted copies of bank statements from the checking accounts of Michael Christopher for the period April 1, 2008 to December 31, 2008; six checks drawn on these accounts in December, 2008; entries in the "General Ledger" of Michael Christopher as of December 31, 2008; and various loan agreements, accounting statements, and tax records of the company for the year 2008.

Petitioner explained that he had no records of any of the hours worked by the claimants for Michael Christopher because he lost all his paperwork for the jobs in Super Storm Sandy. Asked whether he had copies of checks issued the claimants to pay them for their work, petitioner stated that any copies would be contained in the documents submitted into evidence. Records correlating these check payments to the work performed would be in the documents as well. Check payments from Double Edge to the claimants would also be reflected in the ledger entries.

A review of the records submitted shows copies of the six checks to be illegible. The ledger contains entries referencing check payments by Michael Christopher to claimants Jose Cruz, Jaime Cruz, and Antonio Colin between August and December of 2008 for "998 East 35th Street" and "East 35th Street". However, there are no entries or records showing payments by Michael Christopher or Double Edge to the claimants in PR 10-375 and PR 11-241, whether by check or cash, for work performed at 161 North 4th Street or 620 Foster Avenue.

Finally, petitioner asserted that the claimants who worked on the Maletta job in New Jersey continued to work for him later in Brooklyn because they knew he would always pay them. According to petitioner, their claims in PR 10-375 are really for the wages that were never paid by Maletta: "60 Parkway Drive, that's where all the money was owed from. That's why the guys continued to work for me when I was in business for myself, because I paid them." Asked whether he had any paperwork from the Maletta job, petitioner said he had none.

Claimants' Testimony

Claimants Jose J. Cruz, Jaime Cruz Garcia, Eduardo Cruz, and Jose Colin Mercado authenticated their claim forms in PR 10-375 and testified that they were each employed by petitioner at the site on North 4th Street in Brooklyn, New York and were not paid wages for the hours listed in their claims.

Claimant Jose Cruz testified that petitioner sometimes asked him to distribute pay to the other workers. Petitioner paid the crew intermittently during the job but they continued to work for him because he promised to pay them once it was finished. After the work was done and they were still unpaid, the claimants went together to DOL to file claims for their wages. Petitioner told claimant that he and Pignatano were partners in Double Edge Construction. Pignatano had no role in the North 4th Street job, however, other than working at the site one or two days per week. Petitioner was the boss, hired the claimants, and paid them their wages.

Claimants were each questioned on cross-examination concerning the job on Parkway Drive in Orange, New Jersey and whether the wages they were claiming were from that job. Jose Cruz acknowledged that he had worked for petitioner on the job but that it was "much before"

December of 2007. Jaime Cruz Garcia could not recall the specific time frames for North 4th Street "because it has been such a long time" or the specific dates in New Jersey. While acknowledging that the New Jersey job could have been "more or less" around December, 2007, and continued into 2008, he could not recall any exact time frame. On redirect examination, he stated that the wages he is claiming are for the job in Brooklyn, not from New Jersey.

Eduardo Cruz said he had worked at various places in New Jersey but could not recall the specific dates. The money he is claiming is from the job in Brooklyn. Jose Colin Mercado provided only general time frames and said he worked in New Jersey in 2007 and moved to the job in Brooklyn in 2008. Asked whether he was working at the site in Orange, New Jersey when the wages that are the subject of his claim were earned, claimant replied: "When I presented the complaint, we were working in 4th Street in Brooklyn."

DOL's Investigations

Senior Labor Standards Investigator (SLSI) Joanna Cabrera (Cabrera) testified that she supervised the investigation in PR 10-375. SLSI Lori Roberts (Roberts) conducted the investigation in PR 11-241.

Following receipt of the claims in PR 10-375, DOL investigator Cuiyuan Zhu (Zhu) made efforts to visit petitioner's premises and to contact him at the address and phone number listed in the claims. The efforts were unsuccessful. Collection letters were issued on March 27 and August 3, 2009 advising petitioner that unless he responded to the claims or remitted payment by a date certain, DOL would proceed to an Order to Comply, which would entail additional interest and civil penalties.

By letter of August 5, 2009, petitioner stated that the company "we had worked for" was named SAI General Contracting, Inc. owned by Robert Maletta, that petitioner "was not the owner of the company", and that petitioner "did not own any company" during the period of the claims.

DOL contacted Maletta to respond to petitioner's contentions. By fax of August 26, 2010 Maletta stated that his company had never "worked at ... or was [ever] hired to perform any services or supply material" at the North 4th Street site during the period of the claims.

Petitioner did not submit any payroll records or further information establishing that he had paid the wages owed and was not the claimants' employer. In the absence of such proof, DOL issued the orders under review in PR 10-375 on September 27, 2010.

In support of the 200% civil penalty assessed in the wage order, Cabrera completed a report that considered the size of the employer's business, gravity of the violation, the employer's good faith, any recordkeeping violations disclosed during the investigation, and any history of prior violations. Cabrera noted that the employer did not pay the claimants for more than six weeks, denied that the claimants had worked for him, and falsely claimed that someone else was the employer. She added that the person named as the employer denied such status and that the claimants had no knowledge of the other employer.

In support of the $2,000 in civil penalties assessed in the penalty order, Cabrera completed a second report recommending that a $1,000 penalty be assessed for failure of the employer to furnish and/or maintain true and accurate payroll records for each employee for the period December 7, 2007 through May, 22, 2008, and $1,000 for failure to provide a wage statement to them with every payment of wages, for the same period.

Following receipt of the claim in PR 11-241, Roberts issued petitioners a similar collection notice on February 7, 2011. By letter of February 15, 2011, petitioner stated that "[n]o one by the name of Raul Molina Crespo has ever been employed by Michael Christopher Construction Corp." and that the company "had no open contracts" during the period of the claim.

Based on the information received from the claimant in PR 11-241, DOL moved forward with enforcement and issued the orders under review on June 2, 2011.

In support of the 100% civil penalty assessed in the wage order, Roberts completed a similar report that considered the factors described above, noting that the employer failed to submit payroll records and had been uncooperative by asserting that the claimant did not work for the company. In support of the $500 penalty in the penalty order, Roberts completed a report recommending the penalty because petitioner had failed to furnish and/or maintain daily time and other payroll records.

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 commissioner under the provisions of this chapter" (Labor Law § 101[1]). An order of the Commissioner shall be presumed "valid" (Labor Law §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 (Labor Law § 101[3]).

A petition filed with the Board challenging the validity or reasonableness of any order issued by the Commissioner shall "state in what respects [the order] is claimed to be invalid or unreasonable" (Labor Law § 101[2]). The Board's Rules provide that "[t]he burden of proof of every allegation in a proceeding shall be upon the person asserting it" (12 NYCRR § 65.30). The burden is by a preponderance of evidence (State Administrative Procedure Act § 306[1]).

An Employer's Obligation to Keep Records

An employer's obligation to keep adequate employment records is found in Labor Law § 661 and the New York Code of Rules and Regulations (NYCRR). Specifically, Title 12 of the NYCRR § 142-2.6 provides:

> "(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; ..."
[9] net wages paid; and ...

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"(d) Employers ... shall make such records ... available upon request of the commissioner at the place ofemployment."

§ 142-2.7 further provides:

"Every employer ... shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages."

It is an employer's responsibility to keep accurate records of the hours worked by its employees and the amount of wages paid and to provide them with a wage statement every time the employee is paid. This required recordkeeping provides proof to the employer, the employee, and the Commissioner that the employee has been properly paid.

Civil Penalties

Labor Law § 218, extant during the claim periods in this case, provided that once the Commissioner determines that an employer has violated Article 6 or 19 of the Labor Law, he shall issue to the employer an order directing compliance therewith, which shall describe with particularity the nature of the violation. The statute also provided:

"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."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board makes the following findings of fact and conclusions of law pursuant to the provisions of Board Rule 65.30 (12 NYCRR § 65.39).

Petitioner Failed to Meet His Burden of Proof to Establish That He Paid Claimants Their Wages Due

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 or other evidence, even though the results may be approximate (*Matter of Mid-Hudson Pam Corp. v Hartnett*, 156 AD2d 818, 820-21 [3d Dept. 1989]; *Ramirez v Commissioner of Labor*, 110 AD3d 901 [2d Dept. 2013]).

In a proceeding challenging such determination, the employer must come forward with evidence of the "precise" amount of work performed or with evidence to negate the reasonableness of the inferences to be drawn from the employees' evidence (*Anderson v Mt. Clemens Pottery*, 328 U.S. 680, 688 [1949]; *Mid-Hudson Pam Corp.*, 156 AD2d at 821). Given the interrelatedness of wages and hours, the same burden shifting applies to wages and requires the employer to prove the "precise wages" paid or to negate the inferences drawn from the employee's statements (*Doo Nam Yang v ACBL Corp.*, 427 FSupp2d 327, 332 [SDNY 2006]; *Matter of Gattegno*, PR 09-032 [December 15, 2010]). Labor Law § 196-a provides that where an employer fails "to keep adequate records ... the employer in violation shall bear the burden of proving that the complaining employee was paid wages, benefits and wage supplements."

The Court in *Mt. Clemens Pottery* further described the nature of evidence the employer must provide to meet its burden to establish the "precise" amount of work performed: "Unless the employer can provide *accurate estimates* [of hours worked], it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence as to the amount of time spent in these activities in excess of the productive working time" (*Id.* at 693 [emphasis added]; *Matter of Mohammed Aldeen, et al.* PR 07-093 [May 20, 2009] [employer burden to provide "accurate estimate" of hours worked to overcome approximation drawn by Commissioner], *aff'd. sub nom. Matter of Aldeen v Industrial Board of Appeals*, 82 AD3d 1220 [2d Dept. 2011]).

The petition in PR 10-375 alleged that petitioner was not responsible for wages to the claimants because he did not own a business during the period of the claims or at the address listed in the orders. However, petitioner freely admitted that he hired each of the claimants as carpenters on a job at 161 North 4th Street in Brooklyn, New York that was performed by a company he owned and operated called Michael Christopher Construction, and a second

company called Double Edge Construction. Petitioner hired the claimants for both companies, supervised and assigned their work, controlled their schedules, kept track of their hours, had power of attorney to sign their paychecks, and paid them their wages.

The record clearly establishes that petitioner was an "employer" under the Labor Law and is thereby responsible for wages for work performed by the claimants at the Brooklyn site during the period of their claims (*Herman v RSR Security Services, Ltd.*, 172 F3d 132, 139 [2d Cir 1999] [individual is deemed an "employer" if as a matter of economic reality he has power to control the workers in question, with authority to hire and fire employees, supervise and control their work schedules or conditions of employment, determine their rate and method of payment, and maintain employment records, with no one factor dispositive]). The Board has repeatedly found individuals to be employers, along with a corporate or business entity, if they possess the requisite authority over employees (*see e.g. Matter of David Fenske (T/A AMP Tech and Design, Inc.)*, PR 07-031 [December 14, 2011]; *Matter of Robert Lovinger et al*, PR 08-059 [March 24, 2010]; *Matter of Robert H. Minkel and Millwork Distributors, Inc.*, PR 08-158 [January 27, 2010]).

Petitioner testified at hearing that he fully paid the claimants for their work on North 4th Street and that the evidence of payment was contained in the records he submitted into evidence. However, there are no entries or records in the documents submitted showing payments by Michael Christopher or Double Edge to the claimants in PR 10-375, whether by check or cash, for work performed at 161 North 4th Street. General testimony and bare assertions that petitioner paid his employees are insufficient to meet his burden of proof to establish the precise wages paid (*Matter of Young Hee Oh*, PR 11-017 at p. 12 [May 22, 2014]).

Petitioner argued at hearing and in closing that the wages in PR 10-375 are really those owed for a prior job on Parkway Drive in Orange, New Jersey and that the time periods in some of the claims cover work for that job. However, petitioner provided no contracts or payroll records establishing the periods of claimants' employment at the prior job, or the wages paid or not paid. He estimated that the job ended in late 2006 or early 2007, almost a year before the claims in PR 10-375. Petitioner also failed to produce payroll records establishing the periods of employment, the hours worked, and the wages paid the claimants at the later job in Brooklyn. Each of the claimants who testified authenticated their claim forms and testified that they were owed wages for work they performed at the North 4th Street site during the period December, 2007 to May, 2008. As those claims were filed in May of 2008, contemporaneous with the events, we credit them as reliable estimates of their periods of employment and hours worked (*Mid-Hudson Pam Corp.*, 156 AD2d at 820-21). While one claimant testifying in 2013 speculated that the work in New Jersey could have occurred around December, 2007, and continued into 2008, he could not recall with specificity any of the dates of the jobs because of the passage of time. Each of the claimants who testified credibly testified that the wages they were claiming were for the work in Brooklyn, not New Jersey.

It was petitioner's burden to provide contemporaneous payroll records establishing an accurate estimate of the hours worked and the precise wages paid the claimants for the job on North 4th Street, not the claimants. In the absence of such records, the Commissioner may rely on the best available evidence and draw an approximation of those hours and wages owed from the claimants' written statements, even where imprecise (*Mt. Clements* Pottery, 328 U.S. at 687-88 ["The employer cannot be heard to complain that the damages lack the exactness and precision

of measurement that would be possible had he kept records in accordance with the [recordkeeping] requirements of ... the Act"]).

We find the Commissioner's approximation of the periods of employment and wages owed drawn from the claims in this case reasonable. Without affirmative and credible evidence establishing the time periods of the New Jersey work, and that the wages claimed are for that work, petitioner's arguments and conjecture fail to negate the reasonableness of the Commissioner's determination (*Matter of Young Hee Oh*, PR 11-017 at p. 12 [petitioner may not shift its burden to DOL with arguments, conjecture, or incomplete, general and conclusory testimony]; *Ramirez v Commissioner of Labor*, 110 AD3d at 901 [petitioner must demonstrate that method used by Commissioner to calculate underpayment is unreasonable to satisfy burden of proof]).

In PR 11-241, the petitioner argued that no one by the name of Raul Crespo had ever been employed by Michael Christopher and that the company had no contracts and employed no laborers during the period of his claim. However, petitioner admitted at hearing that Michael Christopher later performed a job at 620 Foster Avenue in Brooklyn, New York and that he employed the claimant on that job. As petitioner failed to submit contemporaneous payroll records or other credible evidence establishing an accurate estimate of the hours worked and the precise wages he paid the claimant for that work, he failed to overcome the Commissioner's determination of wages owed.

For the foregoing reasons, we find the Commissioner's determination of wages owed in the wage orders in both cases to be reasonable and valid in all respects.

Interest

Labor Law § 219(1), extant during the claim periods in this case, provided 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."

While the petition in PR 10-375 claimed that petitioner did not owe interest to the claimants, petitioner failed to submit evidence at hearing challenging the assessment of interest made by the wage order. The petition in PR 11-241 did not challenge the assessment of interest in that case and the claim is thereby waived pursuant to Labor Law § 101(2).

The Board finds that the considerations and computations required to be made by the Commissioner in connection with the interest set forth in both orders are valid and reasonable in all respects.

Civil Penalties

The petitions in PR 10-375 and 11-241 did not challenge the civil penalties assessed in the wage and penalty orders in either case and any such claims are thereby waived pursuant to Labor Law § 101[2].

The Board finds that the considerations and computations the Commissioner was required to make in connection with the imposition of the penalties assessed in both orders are valid and reasonable in all respects.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The wage orders in PR 10-375 and PR 11-241 are affirmed; and

2. The penalty orders in both cases are affirmed; and

3. The petitions for review be, and the same hereby are, otherwise denied.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Absent
Frances P. Abriola, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
August 7, 2014.