

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 JACOB LIEBOWITZ AND COHEN AND COHEN, :
 INC., :
 :
 Petitioner, :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply With Article 19, and an Order :
 Under Article 19 of the Labor Law, both dated May 9, :
 2011, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 11-202
RESOLUTION OF DECISION

APPEARANCES

Jacob Liebowitz, petitioner *pro se*.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Mathew Robinson-Loffler of counsel), for respondent.

WHEREAS:

Petitioners Jacob Liebowitz and Cohen and Cohen, Inc. (petitioners) filed a petition with the Industrial Board of Appeals (Board) in the above matter on July 5, 2011 seeking review of two orders issued against them by the Commissioner of Labor (Commissioner) on May 9, 2011. The Commissioner filed an answer on August 22, 2011.

The first order (wage order) demands compliance with Article 19 and directs payment to the Commissioner of \$1,399.06 in unpaid wages due and owing to a former employee, together with interest continuing thereon at the rate of 16% in the amount of \$670.94, and a civil penalty in the amount of \$1,399.06, for a total amount due of \$3,469.06. A second order (penalty order) assesses petitioners a civil penalty of \$500 for failure to provide adequate payroll records during the period May 18, 2002 to May 10, 2008, and \$500 for failure to provide wage statements to

each employee with every payment of wages during the same period, for a total penalty of \$1,000.

According to the pleadings, petitioners entered into a prior settlement with the Commissioner to pay the wages owed, involving monthly payments of \$1,399.06 per month. The final check payment was dishonored by the bank, however, and after notice was allegedly given, the Commissioner issued the orders under review for the balance of wages due, interest, and civil penalties. Final payment of the last installment was received shortly after the orders were issued.

The dispute before the Board involves petitioners' responsibility, if any, for interest on the wages and civil penalties. It is undisputed that the wages have been fully paid. Petitioners request in their petition "abatement of the penalties and interest of \$2,070" in the wage order and "abatement of the \$1,000 civil penalty" in the penalty order.

Upon notice to petitioners at their address listed in the petition, 1982 Amsterdam Avenue, New York, New York 10032, an in person pre-hearing Calendar Conference was scheduled for July 17, 2013. Petitioners did not appear at the conference and the Board was unable to reach them by telephone. Upon notice to the parties, a hearing was initially scheduled for November 13, 2013. The hearing was postponed because of scheduling conflicts and at the respondent's counsel's request so that he might attempt to resolve the matter with the petitioners.

By letter filed with the Board on March 5, 2014, respondent's counsel stated that all correspondence with petitioners had been returned as undeliverable and that he had been unable to contact them to discuss and finalize a resolution that would dispose of the matter. However, the respondent's counsel advised that, in light of the circumstances, the Commissioner "deems the underlying Order[s] to be satisfied by the payments previously made by the Petitioners to the Respondent."

By letter of March 31, 2014, the Board advised the parties that it would consider the Commissioner's letter to be an application to withdraw the orders and that the parties may file any papers in further support or opposition to the application by April 11, 2014. A copy of the Board's letter was served on petitioners at the address listed in their petition above. Petitioners did not file any response.

By letter filed with the Board on April 11, 2014, the Commissioner's counsel clarified the application to request that, in light of the circumstances, the relief requested in the petition be granted:

"Respectfully, the Orders issued by the Respondent are and continue to be valid Orders. Petitioners' requested relief was the "abatement of the penalties and interest of \$2,070 ... [and the] abatement of the \$1,000 civil penalty." The respondent acknowledges Petitioners' payment of the wages in this matter. The remaining amounts determined to be owed on the subject Order are those amounts that are requested to be abated by the Petitioners in their Petition. Accordingly, the Respondent respectfully

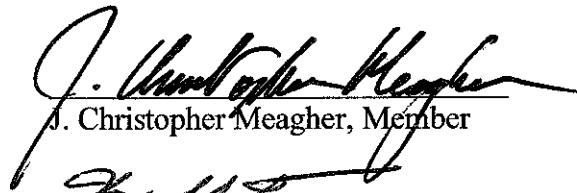
requests that the Board ... adopt a resolution of decision granting the petition.”


Petitioners did not file a response.

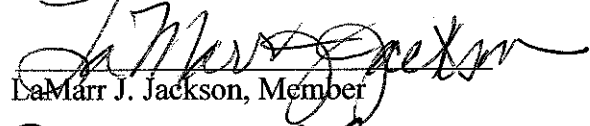
By virtue of the above, the Board grants the Commissioner’s application in the interests of conserving the parties’ resources and the administrative process, and grants the petition insofar as it requests that the interest and civil penalties in the wage and penalty orders be dismissed. The orders are affirmed but modified accordingly.


NOW, THEREFORE IT IS RESOLVED THAT:

1. The wage order is affirmed but modified to eliminate the interest and civil penalty to be paid the Commissioner; and
2. The penalty order is affirmed but modified to eliminate the civil penalties to be paid the Commissioner; and
3. The petition is and shall otherwise be granted.


J. Christopher Meagher, Member


Jean Grunet, 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 22, 2014.