

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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Deputy Counsel

Devin A. Rice  
Associate Counsel

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

-----X  
In the Matter of the Application of: :  
 :  
 :  
NATHAN ROSENBLATT AND ASHLAND :  
MAINTENANCE CORP. (T/A ASHAR CLEANING :  
CORP.), :  
 :  
 :  
Petitioner, :  
 :  
 :  
To Review Under Section 101 of the Labor Law: :  
Two Orders to Comply with Article 19 of the Labor :  
Law, dated November 2, 2007, :  
 :  
 :  
- against - :  
 :  
THE COMMISSIONER OF LABOR, :  
 :  
 :  
Respondent. :  
-----X

DOCKET NO. PR 07-103

INTERIM  
RESOLUTION OF DECISION

WHEREAS:

Petitioners Nathan Rosenblatt and Ashland Maintenance Corp. t/a Ashar Cleaning Corp. filed a Petition with the Board challenging two Orders to Comply with Article 19 of the Labor Law issued by the Department of Labor (DOL) on November 2, 2007. The first Order (Wage Order) finds that the Petitioners failed to pay all wages due to two named claimants from May 11, 1998 to May 5, 2005, and demands payment to the Commissioner of Labor (Commissioner) of \$101,105.90 in wages due and owing together with interest in the amount of \$61,586.89 and a civil penalty in the amount of \$27,256.00 for a total amount due and owing of \$199,218.79. The second Order (Penalty Order) imposes a \$1,000.00 civil penalty for failure to maintain and/or furnish true and accurate payroll records.

The Petition appears to raise four objections to the Orders. First, the Petition alleges that the Orders must be vacated because the Schedule of Minimum Wage Underpayments attached to the Wage Order does not reflect specific information concerning the individual weeks worked by the claimants, the alleged hours worked daily and weekly by the claimants, the location or locations where the claimants were employed, the weekly pay rates for the claimants, and the basic minimum hourly rates during the time period covered by the Orders. Second, the Petition alleges that the Orders must be vacated because DOL has failed to offer any credible evidence to support the Orders. Third, the Petition alleges that the Orders must be vacated because DOL issued the Orders without a foundation of admissible documentary evidence. Finally, the Petition alleges that the Orders must be vacated because Rosenblatt, as a corporate officer, is not personally liable for the allegedly unpaid wages.

The Commissioner filed a motion to dismiss the Petition on February 7, 2008 for failure to set forth any grounds upon which the Board may find that the Orders are invalid or unreasonable. The Petitioners filed their opposition to the Commissioner's motion on August 6, 2008. The Commissioner's reply was filed on August 14, 2008.

The Board scheduled oral argument for this matter for September 24, 2008 which was adjourned to October 22, 2008. However, for the reasons set forth below, we have decided to deny the motion without argument and direct the Petitioners to file an Amended Petition by October 24, 2008.

At the outset we note that we agree with the Commissioner that three of the four objections set forth in the Petition do not set forth grounds upon which relief can be granted. There is no statutory obligation for DOL to set forth in its Orders the individual weeks worked by the claimants, the alleged hours worked daily and weekly by the claimants, the location or locations where the claimants were employed, the weekly pay rates for the claimants, and the basic minimum hourly rates during the time period covered by the Orders. Furthermore, as explained by the Commissioner in her memoranda of law, the Commissioner does not have the burden to prove that its Orders are valid and reasonable. (*see Matter of Angello v. National Finance Corp.*, 1 AD3d 850 [3d Dept. 2003]). However, dismissal of a timely, albeit inartfully drafted, petition is an extreme measure that must not be undertaken lightly particularly as review by the Board affords the Petitioners their only meaningful opportunity to contest the Orders issued against them.

The general rule is that pleadings must be liberally construed and defects ignored in the absence of prejudice to a party (*Estate of Unterweiser v. Town of Hempstead*, 235 AD2d 453 [2d Dept. 1997]). Accepting all the facts alleged as true, and according the Petitioners the benefits of every possible favorable inference, as we must, we find that the Petition sufficiently notifies the Commissioner that the Petitioners deny owing any wages to the claimants and challenges the individual liability of Petitioner Rosenblatt (*cf. Bernberg v. Health Management Systems Inc.*, 303 AD2d 348 [2d Dept. 2003]). Any theoretical prejudice that may exist to the Commissioner is outweighed by the due process interests of the Petitioners. Because the pleadings are unclear, we direct the Petitioners to file an Amended Petition that conforms with Board Rules of Procedure and Practice 66.3 (e), (f) and (g) (12 NYCRR 66.3 [e], [f] and [g]) which require a clear and concise statement of the grounds on which the Orders are alleged to be invalid or

unreasonable, omitting conclusions of fact or law; a statement of any other material or relevant facts; and a statement of the relief requested.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT

1. The Respondent's Motion to Dismiss dated February 4, 2008 is denied.
2. The Petitioners must file an Amended Petition conforming to this Resolution of Decision by October 24, 2008.
3. The oral argument scheduled in this matter for October 22, 2008 is cancelled.

  
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Anne P. Stevason, Chairman

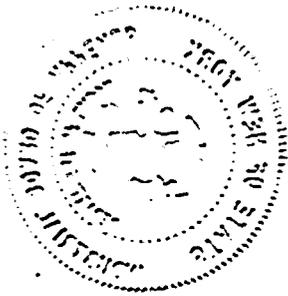
Absent  
\_\_\_\_\_  
Susan Sullivan-Bisceglia, Member

  
\_\_\_\_\_  
J. Christopher Meagher, Member

Absent  
\_\_\_\_\_  
Mark G. Pearce, Member

  
\_\_\_\_\_  
Jean Grumet, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
October 8, 2008.



OFFICE OF THE ATTORNEY GENERAL  
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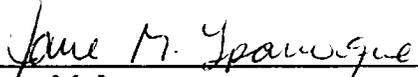
State of New York    )  
                                  ) SS:  
County of Albany    )

Jane M. Ipanaque, being duly sworn, deposes and says:

1. I am not a party to this action, am 18 years of age or older, and am employed by the New York State Industrial Board of Appeals, whose principal office is located in the Empire State Plaza, Agency Building #2, 20<sup>th</sup> floor, Albany, New York 12223.
2. On October 8, 2008, I served a true copy of the Nathan Rosenblatt and Ashland Maintenance Corp. (T/A Ashar Cleaning Corp.), Docket No. PR 07-103, by depositing the Interim Resolution of Decision, enclosed in a first class postpaid wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state, addressed to the following addresses which are designated by the addressees for that purpose:

Maria L. Colavito, Counsel  
New York State Department of Labor  
Attn: Jeffrey G. Shapiro, Esq.  
State Office Campus, Bldg. 12- Room 509  
Albany, New York 12240

The Ziskin Law Firm  
Attn: Richard B. Ziskin, Esq.  
6268 Jericho Turnpike, Suite 12A  
Commack, NY 11725

  
\_\_\_\_\_  
Jane M. Ipanaque

Sworn to before me this 8<sup>th</sup> day  
of October, 2008.



\_\_\_\_\_  
Notary Public  
**DEVIN A. RICE**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 02R16182358**  
**Qualified in Kings County**  
**My Commission Expires February 28, 2012**

NY Commission exhibits regarding SA 3013  
submitted to KVBT County  
NO: 03419195228  
MOJABA PUBLIC-SERVE OF NEW YORK  
DEAN V. BICE