

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Peter H. Moulton
Administrative Order

THE PEOPLE OF THE STATE OF NEW YORK,
by ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York,

Petitioner,

- v -

INDEX NO. 450627/16

DOMINO'S PIZZA, INC., DOMINO'S PIZZA, LLC,
DOMINO'S PIZZA FRANCHISING, LLC,
ANTHONY MAESTRI, HI-RISE PIZZA, INC.,
HUDSON RIVER PIZZA, LLC, UPPER WEST HARLEM
PIZZA, INC., NORTH BEDFORD AVENUE PIZZA,
INC., UPTOWN PIZZA, INC., NORTHERN
WESTCHESTER PIZZA, LLC, SHUEB AHMED,
NADER INC., SUPER DUPER PIZZA INC.,
MATTHEW J. DENMAN, and
DENMAN ENTERPRISES, INC.,

Respondents.

Administrative Order:

By letters dated June 3 and 8, 2016, counsel for respondents Domino's Pizza, Inc., Domino's Pizza, LLC and Domino's Pizza Franchising, LLC (Domino's) requests assignment of this special proceeding to the Commercial Division pursuant to Uniform Rule 202.70. The Attorney General opposes the request by his letter dated June 8, 2016. No other correspondence relating to this request has been received.

This is a law enforcement action brought by the Attorney General (OAG) pursuant to Executive Law § 63 (12), by which the OAG alleges that hundreds of Domino's delivery workers at a number of franchisee restaurants have been underpaid by their employers in violation of New York's Labor Laws, specifically Articles 6 and 9, and the rules and regulations promulgated thereunder. As set forth in the Petition, the OAG estimates that the Franchise Respondents owe at least \$567,000 in back wages and underpayments to their workers, plus liquidated damages and interest. The OAG also alleges that, along with the Franchise Respondents, Domino's is liable as a joint employer, because it exercised a high level of control over employee conditions at its franchise stores and because of its

alleged role in causing the wage violations. Specifically, the OAG alleges that Domino's requires all franchisees to use a computer system (PULSE) even though Domino's has known, since at least 2007, that the payroll report function in PULSE systematically under-calculates gross wages owed to workers. The OAG contends that Domino's failure to advise its New York franchisees of these flaws, or to remedy them, is a violation of the anti-fraud provision of Executive Law § 63 (12), and that Domino's has also violated New York's Franchise Sales Act, and its anti-fraud provision, General Business Law § 687. By way of relief, the OAG seeks a broad range of declaratory and injunctive relief regarding Domino's business practices as well as an accounting, restitution, disgorgement, liquidated damages, attorneys' fees and prejudgment interest.

Counsel for Domino's contends that this proceeding meets the standards for assignment to the Commercial Division pursuant to Uniform Rule 202.70 (b) (1) since it alleges statutory violations arising out of business dealings. The OAG contends that wage-and-hour claims under the Labor Law are not appropriate for assignment to the Commercial Division.

In the past, the Administrative Judge has found that garden variety minimum wage disputes under the Labor Law are not the kind of complex business disputes that belong in the Commercial Division. See, e.g., Alberto Rivera v Whole Foods Market Group, Inc., Index No. 651559/14 (Administrative Order dated September 4, 2014; Albert Jackson v U.S. Specialty Insurance Co., et al., Index No. 156616/12 (Administrative Order dated April 29, 2013). However, I find that this special proceeding does meet the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1), because the statutory violations alleged do not simply assert wage violations by Domino's franchisees, but also, implicates the business relationship between Domino's and their franchisees.

Accordingly, Domino's request for assignment to the Commercial Division is granted. The General Clerk's Office is directed to reassign this case at random to a Justice of the Commercial Division. (The petition is currently returnable in the Motion Submissions Part on June 30, 2016.)

Dated: June 13, 2016

ENTER:  , A.J.

HON. PETER H. MOULTON

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