

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30661
W/hu

_____AD3d_____

Argued - March 10, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2010-01902

DECISION & JUDGMENT

In the Matter of Mohammed Aldeen, et al., petitioners,
v Industrial Appeals Board, et al., respondents.

(Index No. 18167/09)

Ofodile & Associates, P.C., Brooklyn, N.Y. (Anthony Ofodile of counsel), for petitioners.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Patricia Kakalec, Seth Kupferberg, and C. Michael Higgins of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the State of New York Industrial Board of Appeals dated May 20, 2009, which, after a hearing, affirmed two orders of the Commissioner of the New York State Department of Labor, both dated October 19, 2007, finding that the petitioners violated Labor Law article 19 by underpaying employees, and violated Labor Law article 6 by failing to keep payroll records and provide wage statements, and imposing civil penalties.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination by the State of New York Industrial Board of Appeals (hereinafter the IBA) affirming two orders of the Commissioner of the New York State Department of Labor which determined that the petitioners violated Labor Law article 19 by underpaying employees, and Labor Law article 6 by failing to keep payroll records and provide wage statements, is supported by substantial evidence (*see generally 300 Gramatan Ave. Assoc. v State Div. of Human*

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Rights, 45 NY2d 176, 179; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230). There is no merit to the petitioners' contention that the IBA's determination is unsupported by substantial evidence because it is based on hearsay (see *Matter of Hughes v New York State Unified Ct. Sys. Off. of Ct. Admin.*, 78 AD3d 700; *Matter of Price v Property Clerk of N.Y. City Police Dept.*, 74 AD3d 1078, 1080; *Matter of Lumsden v New York City Fire Dept.*, 134 AD2d 595, 596). Contrary to the petitioners' contentions, the calculation of underpayments, for some employees, correctly included overtime at a "regular rate" (12 NYCRR 142-2.2), and a "spread of hours" bonus (12 NYCRR 142-2.4, 142-2.18). There is no merit to the petitioners' claim that the civil penalties were imposed in violation of Labor Law § 218(1) (see Labor Law § 218[1]).

FLORIO, J.P., DICKERSON, LEVENTHAL and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court