

SUMMARY OF EVIDENCE

Four J's is a sewing contractor engaged in the apparel business. As such it is required to register with the Commissioner annually. Registration applications as well as registration fees and all accompanying documentation are required to be received by the Commissioner by January 15 each year. Once the registration is complete, a registration certificate is sent to the apparel contractor, who is then required to post the certificate at its place of business.

Four J's submitted an application for registration in 2004 but received two notices from DOL, dated January 22, 2004 and March 11, 2004, respectively, indicating that its application was incomplete because it failed to provide proof of workers' compensation and disability insurance. Four J's submitted an application for registration in 2005 but again received notices from DOL indicating that its application was incomplete because it owed another \$75.00 in registration fees due to the fee increase that year and because it failed to provide proof of workers' compensation or disability insurance. In 2006, in response to Four J's application, DOL again notified it that its application was incomplete because it still owed the \$75.00 registration fee for 2005 and because it failed to show proof of insurance.

Four J's applied for registration again in 2007. On January 24, 2007, it was notified that its application was incomplete for the following reasons: it still needed to pay the \$75.00 balance of the registration fee for 2005; it needed to sign the original application; it needed to provide the social security numbers, home addresses and photographic proof of identity for the principals of the corporation; and it needed to show proof of workers' compensation and disability insurance. On February 23, 2007, a second notice was sent by DOL informing Four J's that its apparel registration was overdue since the required information had not yet been received.

On May 16, 2007 Edger Feng, DOL Labor Standards Investigator, visited Petitioner's place of business and observed workers operating sewing machines. No certificate of registration was posted. Feng issued a Notice of Labor Law violation for failure to comply with Labor Law § 345.1 (failure to register) along with an Order to Register within 20 days, and served it on Mr. Caceres at the time of the visit. On August 10, 2007 Four J's was sent a Notice of Conference for August 28, 2007. Petitioner did not appear at the conference. On October 22, 2007, Four J's paid the additional \$75.00 registration fee that was outstanding for its registration for 2005. On October 26, 2007, Four J's was sent a letter notifying it that its application for registration was still incomplete because it had failed to provide the required social security numbers or names, titles and home addresses of all principals and failed to provide proof of workers' compensation or disability insurance.

On November 9, 2007 DOL issued an Order to Comply with Article 12-A of the New York State Labor Law and assessed a penalty of \$500 against Four J's for its failure to be registered on May 16, 2007.

Petitioner submitted evidence that it paid all of the registration fees due and testified that none of the fees or applications had ever been returned by DOL.

DISCUSSION

When a petition is filed, the Board reviews whether the Commissioner's order is valid and reasonable. The Petition must specify the order "proposed to be reviewed and in what respects it is claimed to be invalid or unreasonable. Any objections . . . not raised in the [petition] shall be deemed waived" (Labor Law § 101). The Board is required to presume that an order of the Commissioner is valid (Labor Law § 103 [1]). Pursuant to the Board's Rules of Procedure and Practice 65.30 [12 NYCRR 65.30]: "The burden of proof of every allegation in a proceeding shall be upon the person asserting it." Therefore, the burden is on the Petitioner to prove that the Order under review is not valid or reasonable.

CONTRACTOR'S FAILURE TO REGISTER

A sewing contractor's obligation to register with the Commissioner is found in Labor Law § 341, which provides, in pertinent part:

"No manufacturer or contractor shall engage in the apparel industry unless he or she registers with the commissioner, in writing, on a form provided by the commissioner, which shall contain the following information: . . . the name address and social security number of each officer and of the ten largest shareholders. Such registration form shall also require that . . . each officer, submit photographic proof of identity. . . The commissioner shall issue a certificate of registration, which shall be effective for a period of twelve months, upon receipt of a completed registration form accompanied by the requisite photographic proof of identity and documentation that a workers' compensation insurance policy is in effect for the registrant's production employees working in New York state."

Therefore, an apparel contractor must pay not only its registration fee but also submit a complete application along with all of the required information and documentation. On May 16, 2007, the date of the violation cited in the Order to Comply, Four J's was not registered with the Commissioner. Although Petitioner, as of the date of the Order to Comply (November 9, 2007), had paid all registration fees, it was still not properly registered since it had failed to submit the required information regarding its principals and had also failed to submit documentation proving that its production employees were covered by workers' compensation insurance.

Labor Law § 345.1 provides that any contractor who fails to comply with the registration requirements of § 341 "shall be deemed to have violated this article." Labor Law § 345.1 further provides that the "commissioner may impose a civil penalty upon a manufacturer or contractor" of up to \$1,500 for an initial violation and up to \$3,000 for a second or subsequent violation of § 341.

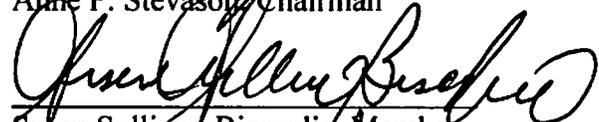
The Board finds that the Order to Comply under review assessing a \$500 civil penalty for Petitioner's failure to be registered on May 16, 2007 was valid and reasonable.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT

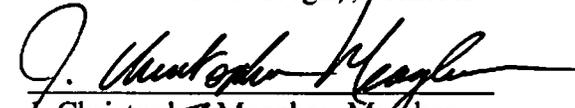
1. The Order to Comply with Article 12-A of the Labor Law, dated November 9, 2007 is hereby affirmed; and
2. The Petition is denied.



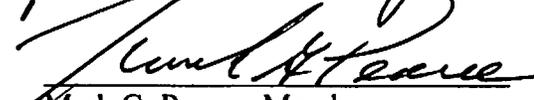
Anne P. Stevason, Chairman



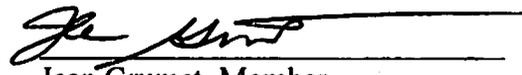
Susan Sullivan-Bisceglia, Member



J. Christopher Meagher, Member



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
December 17, 2008.