STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

GABRIELA PEÑA-NOGUERA,

Petitioner,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Articles 6 and 19 of the Labor Law, dated August 11, 2021,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 21-123

RESOLUTION OF DECISION

APPEARANCES

Gabriela Peña-Noguera, Miami, Florida, petitioner pro se.

Jill Archambault, General Counsel, NYS Department of Labor, Albany (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

The above-proceeding was commenced on September 14, 2021, when petitioner Gabriela Peña-Noguera filed a petition for review pursuant to Labor Law § 101 and the Industrial Board of Appeals Rules of Procedure and Practice (Board Rules) (12 NYCRR) Part 66\(^1\) challenging an Order to Comply with Articles 6 and 19 of the Labor Law, (hereinafter “order”) issued against “Gabriel Pena and GPGInteriors, LLC T/A GPG Interiors LLC” by the respondent, Commissioner of Labor. The petition alleges that the order is unreasonable because, in 2017, the year during which the claim period fell, petitioner was 14 years old, and at the time of filing her petition she was 18 years old; petitioner’s given name is Gabriela not “Gabriel” as the order states; and petitioner resides in Miami, Florida, not in New York. As such, petitioner requested that her petition be granted, and the order be dismissed against her.

\(^1\) The Board Rules were amended on March 30, 2022. The current corresponding section of the Board Rules is Part 65 but at the time of filing in this case under the former Board Rules, the relevant section was Part 66.
On March 14, 2022, the Board received a motion from respondent requesting to amend the order. Respondent’s motion stated that respondent agrees with petitioner that she is not the “Gabriela Pena Noguera” who is named in the order because petitioner resides in Miami, Florida and “was a minor at the time of the subject wage claim.”

While respondent’s motion incorrectly states that “Gabriela Pena Noguera” is a name in the order under review, which it is not, after review of the petition, motion, and respondent’s other correspondence with the Board, and after full consideration of the Board’s Rules of Procedure and Practice, the Board grants petitioner’s and respondent’s joint request to amend the order to remove Gabriela Peña-Noguera A/K/A Gabriel Pena at the Miami, Florida address identified by petitioner in her petition and as listed in the order.

The underlying order names a Gabriel Pena at two Brooklyn, New York addresses and a corporate entity, neither of which petitioned the Board for review of the order pursuant to Labor Law § 101 (I). The underlying order as issued against those entities remains valid unless declared invalid in a proceeding before the Board under Labor Law § 103 (I). Thus, the Board grants the petition and revokes the order only as to Gabriela Peña-Noguera A/K/A Gabriel Pena at the Miami, Florida address identified by petitioner in her petition and as listed in the order.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Order to Comply with Articles 6 and 19 of the Labor Law dated August 11, 2021, is amended to remove Gabriela Peña-Noguera A/K/A Gabriel Pena at the Miami, Florida address identified by petitioner in her petition and as listed in the order; and

2. The petition of Gabriela Peña-Noguera is granted.

Dated and signed by the Members of the Industrial Board of Appeals on May 18, 2022.

Molly Doherty, Chairperson

Michael A. Arcuri, Member

Najah Farley, Member

ABSENT

Patricia Kakalec, Member

Sandra Abeles, Member