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Supreme Court, Appellate Division, Third Department, New York

Matter of CHRISTINA CASTILLO, Claimant-Respondent

v

FRIDA BROWN et al., Appellants, Respondent,

and

WORKERS' COMPENSATION BOARD, Respondent

Decided June 15, 2017

- Facts:** The claimant was a live-in domestic worker, and filed for workers' compensation benefits after cutting her hand on broken glass. The claim was established and the employer was assessed a penalty of \$86,000 for not maintaining coverage as required under Workers' Compensation Law Section 50. The penalty was for the period of December 31, 2009 through May 18, 2012. The Board affirmed the penalty and Full Board Review was denied. The employer appealed.
- Holding:** *Affirmed.*
- Discussion:** Workers' Compensation Law Section 26-a(2)(b) provides two alternatives for calculating the penalty, and states that the Board shall impose an assessment in the sum of \$1,000 for each 10-day period of non-compliance or a sum not in excess of two times the amount of the cost of compensation for its payroll for the period of such failure. The employer argued that the latter should have been used, although the Court noted that they never objected to the penalty or raised that argument during the hearing, nor did they present any testimony or other proof regarding the duration of the claimant's employment or reason for their failure to obtain coverage. However the Board did review the penalty and credited the claimant's testimony as to duration of employment and found no evidence to substantiate the claim that the homeowners were unaware of the necessity of obtaining coverage. The Court found no reason to disturb the Board's decision on review of the record. The employer's challenge to the constitutionality of the penalty was not preserved for review as it was not raised before the Board. The

Court found the Board did not abuse its discretion or act arbitrarily or capriciously in denying the request for Full Board Review.

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