

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 25, 2025

CV-23-2004

In the Matter of the Claim of JOSEPH
CABRERA,

Appellant,

v

NEW YORK CITY HOUSING
AUTHORITY,

Respondent.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,

Respondent.

Calendar Date: September 9, 2025

Before: Garry, P.J., Aarons, Fisher, McShan and Mackey, JJ.

Ginarte Gonzalez Winograd LLP, New York City (*Patrick M. Quinn* of counsel),
for appellant.

Weiss, Wexler & Wornow, PC, New York City (*J. Evan Perigoe* of counsel), for
New York City Housing Authority, respondent.

Letitia James, Attorney General, New York City (*Alison Kent-Friedman* of
counsel), for Workers' Compensation Board, respondent.

Garry, P.J.

Appeal from a decision of the Workers' Compensation Board, filed September 20, 2023, which, among other things, denied counsel's application for an award of counsel fees.

In 2022, after establishing a claim for workers' compensation benefits for various work-related injuries, claimant was classified with a permanent partial disability and tentative indemnity awards for a specified period were made, with direction that the self-insured employer continues payments at the permanent partial disability rate. Thereafter, claimant's counsel made a request for further action to address whether certain payments of the award were timely paid. Following a hearing at which the self-insured employer conceded that it failed to make certain compensation payments, the Workers' Compensation Law Judge imposed a late payment penalty pursuant to Workers' Compensation Law § 25 (1) (e), payable to claimant, but denied the application by claimant's counsel for fees in connection with securing the late payment penalty. Upon administrative appeal challenging the preclusion of counsel fees, the Workers' Compensation Board affirmed, finding that additional counsel fees were properly denied as the recent amendments to Workers' Compensation Law § 24, which set forth the schedule of counsel fees based upon awards, makes no provision for additional fees payable to a claimant's representative based upon the assessment of a late payment penalty. Claimant appeals.¹

The Board's decision finding that it lacked authority under the recent amendments to Workers' Compensation Law § 24 to award counsel fees for legal services provided in procuring a late payment penalty is consistent with this Court's recent decision in *Matter of Gonzalez v Northeast Parent & Child Socy.* (232 AD3d 1011, 1011-1012 [3d Dept 2024], *lv dismissed in part & granted in part* 43 NY3d 937 [2025]) and its progeny (*see Matter of Clifton v Research Found. of SUNY*, 234 AD3d 1235, 1235-1236 [3d Dept 2025]). Accordingly, for the reasons set forth in *Matter of Gonzalez*, the Board's finding


¹ The sole issue raised on appeal is a challenge to the denial of counsel fees. As such, the notice of appeal – which was filed in claimant's name – should have been filed on behalf of the law firm (*see Matter of Tompkins v Bedford Stone & Masonry*, 198 AD3d 1031, 1032 n [3d Dept 2021]; *Matter of Dzielski v New York State Dept. of Corr. & Community Supervision*, 195 AD3d 1255, 1256 n [3d Dept 2021]). Nevertheless, in the absence of any demonstrated prejudice, we will disregard this error (*see CPLR 2001; Matter of Tompkins v Bedford Stone & Masonry*, 198 AD3d at 1032 n).

that claimant's counsel is not entitled to additional fees related to the late payment penalty will not be disturbed.

Aarons, Fisher, McShan and Mackey, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court