

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ENGELKE FARMS, LLC,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Pursuant to Article 27 of the New York
Labor Law, dated November 18, 2010,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PES 10-017

RESOLUTION OF DECISION

APPEARANCES

Amanda Engelke, *pro se*, for Engelke Farms, LLC.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor, (Benjamin A. Shaw of counsel), for respondent.

WHEREAS:

1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on December 8, 2010; and
2. The petition was served on respondent on December 23, 2010; and
3. On January 27, 2011, respondent filed a motion to dismiss the petition because it fails to state a cause of action upon which the Board could find the order to be invalid or unreasonable; and
4. By letter dated February 24, 2011, the Board advised petitioner that it must file a written response on or before March 24, 2011; and
5. On March 23, 2011, petitioner responded to the motion, reiterating that petitioner's owner is incapacitated and cannot defend the action and requesting dismissal; and

6. The only allegation made in the petition is that the petitioner's owner is in the hospital, which is not an allegation upon which the Board can find that the order is invalid or unreasonable; and
7. The petition must, therefore, be dismissed for failing to state a cause of action upon which relief can be granted.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

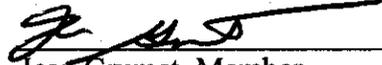
This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.



Anne P. Stevason, Chairperson

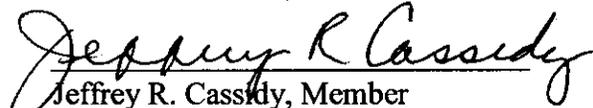


J. Christopher Meagher, Member



Jean Grumet, Member

LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
May 30, 2012.

6. The only allegation made in the petition is that the petitioner's owner is in the hospital, which is not an allegation upon which the Board can find that the order is invalid or unreasonable; and
7. The petition must, therefore, be dismissed for failing to state a cause of action upon which relief can be granted.

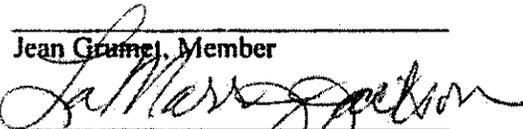
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumel, Member



LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
June 4, 2012.