STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: RALPH AMORUSO AND LAWRENCE AMORUSO A/K/A LARRY AMORUSO AND FLORIO'S ENTERPRISES, INC. (T/A FLORIO'S GRILL AND CIGAR BAR), Petitioners, To Review Under Section 101 of the Labor Law: An Order to Comply With Article 19 of the Labor Law and an Order to Under Articles 6 and 19 of the Labor Law, both dated October 8, 2009, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 09-325 RESOLUTION OF DECISION ON APPLICATION FOR RECONSIDERATION

APPEARANCES

Devereaux, Baumgarten (Sidney Baumgarten of counsel), for petitioners.

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

WHEREAS:

On November 16, 2009, the petitioners filed a petition for review of orders issued by respondent Commissioner of Labor (Commissioner); however, copies of the orders were not attached. By letter dated December 2, 2009 enclosing a copy of the Board's Rules of Practice and Procedure (Rules) (12 NYCRR Part 66), the Board directed the petitioners to file an amended petition and a copy of the orders sought to be reviewed in accordance with the Rules. The letter directed the petitioners to file their amended petition on or before January 4, 2010. An amended petition was subsequently filed on March 29, 2010, and served on the respondent on April 22, 2010.

The respondent moved the Board on May 27, 2010 for an order dismissing the amended petition for failing to state a cause of action upon which relief could be granted.

The Board, agreeing that the amended petition was defective, nevertheless denied the motion by letter dated October 19, 2010, and directed the petitioners to file a second amended petition by November 19, 2010.

No amended petition having been filed, the Board dismissed the matter by Resolution of Decision dated April 27, 2011. The petitioners filed a Motion for Reconsideration dated June 7, 2011 stating that the illness and death or one of the petitioners made it impossible for the petitioners' former attorney to adequately comply with the Board's directions. Since the original petition was otherwise timely filed, we grant the Motion for Reconsideration.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The petitioners' motion for reconsideration is granted; and

2. The Board's Resolution of Decision in this matter issued April 27, 2011 is revoked; and

3. The petitioners must file an amended petition with the Board within 30 days of the date of this Decision; and

4. The Board will serve the amended petition on the Commissioner in accordance with the Rules; and

5. The Commissioner of Labor's answer to the amended petition shall be filed with the Board in accordance with the Rule 66.5.

Anne P. Stevason, Chairman

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 Albany, New York, on
October 11, 2011.