

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

NICHOLAS SALAMONE AND SALAMONE :
RESTAURANTS, INC., :

Petitioners, :

DOCKET NO. PR 10-153

To Review Under Section 101 of the Labor Law: :
An Order to Comply with Article 4 of the Labor Law, :
dated May 10, 2010, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Nicholas Salamone, petitioner pro se and for petitioner Salamone Restaurants, Inc.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Benjamin A. Shaw, of counsel), for the 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 May 19, 2010. The petition challenged Order to Comply No.10-00586 of May 10, 2010, that found petitioner violated Section 130.1 of Article 4 of the Labor Law by permitting the employment at his restaurant, The Friar's Table, on or about September 4, 2009, of a minor under 14 years of age; and
2. The Friar's Table has had three (3) prior Labor Law violations, one of which, in August 2009, involved the employment of a minor child other than the minor child at issue in this proceeding; and
3. The Order to Comply of May 10, 2010, ordered the petitioners to pay a \$2,000.00 civil penalty; and
4. Respondent filed its Answer on July 7, 2010; and
5. Notice of a Pre-Hearing Conference set for August 27, 2012, was sent to the parties on July 24, 2012; and

6. Petitioner failed to call in for the teleconference on August 27, 2012; and
7. The Board sent out a Notice to all parties on November 30, 2012, for a Hearing set for December 13, 2012; and
8. On December 11, 2012, counsel for respondent, Benjamin A. Shaw, advised the Board that he had made efforts to contact the petitioner by calling him at The Friar's Table and had been told by the new owner of the business that the petitioner had sold the business about two years ago. The new owner did not have any contact information for the petitioner. Since the Hearing Notice had been sent to the restaurant, it would appear that the petitioner did not receive actual notice of the Hearing; and
9. Based upon Mr. Shaw's representations, the Hearing set for December 13, 2012, was cancelled; and
10. The Board also has made efforts to contact the petitioner to no avail; and
11. The petitioner did not notify the Board of any change of address or phone number or any other way to have contact; and
12. The Board finds that the petitioner by failing to notify us of a change of address (*see* Board Rules 65.4 [12 NYCRR 65.4] [any change in contact information must be communicated promptly to the board and failure to do so shall be deemed a waiver of the right to notice and service under the Board's Rules]), has abandoned its appeal, and that the proceeding should be dismissed in accordance with the Rules.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

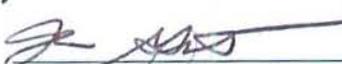
The proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.

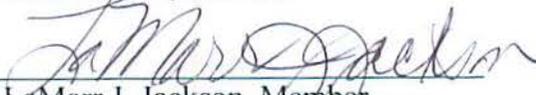


Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 20, 2013.


Anne P. Stevason, Chairperson


J. Christopher Meagher, Member


Jean Grumet, Member


LaMarr J. Jackson, Member

Absent
Jeffrey R. Cassidy, Member