

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

LAWRENCE PESCE (T/A RENOVATION &
REHABILITATION SYSTEMS CO., INC.),

Petitioner,

To Reconsider a Resolution of Decision dated
November 18, 2010, and captioned Renovation &
Rehabilitation Systems Co., Inc., as Petitioner and
Thereafter To Review Under Section 101 of the Labor
Law: An Order to Comply with Article 6 of the Labor
Law and An Order under Article 6 of the Labor Law,
both dated March 17, 2010,

DOCKET NO. PR 10-194
Order to Comply No. 10-00311

RESOLUTION OF DECISION
ON APPLICATION FOR
RECONSIDERATION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Kressel, Rothlein, Walsh & Roth, LLC, Stephen Kressel of Counsel, for Petitioner.

WHEREAS:

On June 18, 2010, the Board received a petition, enclosed in an envelope postmarked June 14, 2010, seeking review of an order or orders that Respondent Commissioner of Labor (Respondent) issued, apparently against Renovation Rehabilitation Systems Co., Inc. The petition was filed by Lawrence Pesce, as President of Renovation Rehabilitation Systems Co., Inc. Mr. Pesce appeared *pro se*. No copy of the order(s) sought to be reviewed was received with the petition, and based on the petition, it appeared that Renovation Rehabilitation Systems Co., Inc. was the Petitioner.

The matter was assigned Docket No. 10-194, and on June 30, 2010, a letter was mailed to Mr. Pesce at the address printed on the petition, requesting that he file an amended petition by July 28, 2010, including a copy of the order(s) that he sought to have the Board

review, in accordance with the Board's Rules of Procedure and Practice (Rules). The June 30 letter stated:

Note that the Board functions separately from the Department of Labor . . . and does not have copies of any documents that may previously have been filed with, or issued by, the Department of Labor concerning this case, including the order(s) to be appealed.

The Board received no response to the June 30, 2010 letter, which was not returned by the postal service, and by Resolution of Decision (Decision), dated November 18, 2010 and issued November 30, 2010, the Board dismissed the proceeding in Docket No. 10-194, finding that the Petitioner had ample opportunity to comply with the June 30th letter.

On January 31, 2011, the Board received a letter from an attorney asserting that "at all times my offices represented" Renovation Rehabilitation Systems Col, Inc., that Mr. Pesce did not receive the June 30, 2010 letter that was referenced in the Board's Decision, and requesting "in the interest of justice" that Mr. Pesce be given the opportunity to file an amended petition.

The Board sent a responsive letter on February 7, 2010, advising that applications for reconsideration are governed by Rule § 65.41 and that such application should be filed with the Board with proof of service of the application on Counsel for Respondent. In addition, the letter noted that "neither the Board's file in this matter nor the Board's docket shows that you appeared on behalf of the Petitioner. In addition, the petition that was filed with the Board was signed by [Mr. Pesce] and was contained in an envelope with the Petitioner's return address."

On March 10, 2011, the Board received a document labeled "amended petition," verified by Lawrence Pesce, along with proof of service on Counsel for the Department of Labor, and a notice of appearance of Mr. Pesce's attorney. The allegations of the amended petition challenge the order(s) that Respondent issued against the Petitioner, but no copy of order(s) was received with the amended petition and no explanation was provided for the failure to respond to the Board's June 30, 2010 letter.

Rule 65.41 provides, in pertinent part, that an "[a]pplication for reconsideration after a determination made by the Board shall be in writing, and shall state specifically the grounds upon which the application is based." By letter dated April 1, 2011, Petitioner's attorney was advised that "[a]ny application for reconsideration should be supported by an affidavit by the person(s) with personal knowledge of the facts asserted as a basis for the Petitioners' [sic] failure to respond to the Board's letter dated June 30, 2010." The April 1, 2011 letter also reiterated the requirement that the application for reconsideration include a copy of the order(s) to be reviewed.

On May 9, 2011, the Board received an affidavit of Mr. Pesce explaining that "[f]or whatever reason I never saw the June 30, 2010 letter. Had I seen it or reviewed it there would have been a prompt response," and "I was not aware of the Board's requirements" for

filing petitions,” and “I have always utilized attorneys for Petitioner’s business and mistakenly believed my counsel was in receipt of the June 30, 2010 letter.” Among the documents annexed to Petitioner’s affidavit were an amended petition, an order under Labor Law article 19 and an order to comply with Labor Law article 6. Both orders are dated March 17, 2010 and both are against “Lawrence Pesce and David Abramovitz (T/A Renovation & Rehabilitation Systems Co., Inc.)”

Subsequently, Petitioner’s attorney filed an affidavit of service of the Petitioner’s May 2011 filing on Counsel for Respondent, who has not appeared in this matter.

At the outset, we find that Mr. Pesce has not established a basis for the Board to reconsider its November 18, 2010 Decision dismissing the petition that was filed in June 2010. Confusion, mistakes, and ignorance of the Board’s requirements are not bases for reconsideration, especially when the orders, which Mr. Pesce does not deny receiving, provide information on how to access the Board’s Rules and even state the Board’s telephone number. Mr. Pesce does not assert that he attempted to review the Rules or telephone the Board for assistance in filing a petition or responding to its June 30, 2010 letter.

Even if we were to reconsider the November 18, 2010 Decision and re-open this matter, which we do not do, we would nonetheless be required to dismiss the petition again. Labor Law § 101 provides that “any person may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.” Accordingly, a timely appeal from the orders of March 17, 2010 would have been filed within 60 days, or by May 17, 2010, as May 16, 2010 was a Sunday. As the orders provide notice of the time limit for an appeal, Mr. Pesce did not even need to read the Rules to learn this important information. As the petition was not mailed to the Board until June 14, 2010 (see Rule 65.5 [d]), or received until June 18, 2010, this appeal was untimely as originally filed.

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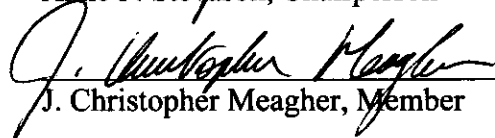
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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The identity of the Petitioner and caption in Docket No. PR 10-194 is changed from "Renovation & Rehabilitation Systems Co., Inc." to "Lawrence Pesce (T/A Renovation & Rehabilitation Systems Co., Inc.)" and the Petitioner's application for reconsideration of the November 18, 2010 Board Resolution of Decision in Docket No. PR 10-194, be, and the same hereby is, denied.



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
July 26, 2011.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The identity of the Petitioner and caption in Docket No. PR 10-194 is changed from "Renovation & Rehabilitation Systems Co., Inc." to "Lawrence Pesce (T/A Renovation & Rehabilitation Systems Co., Inc.)" and the Petitioner's application for reconsideration of the November 18, 2010 Board Resolution of Decision in Docket No. PR 10-194, be, and the same hereby is, denied.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grunet, Member



LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Rochester, New York, on
July 26, 2011.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

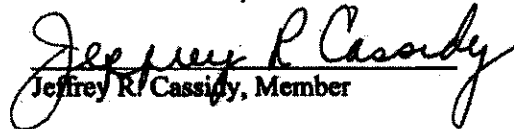
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Anne P. Stevason, Chairperson

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 Albany, New York, on
July 26, 2011.