

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 DAVID B. ITZKOWITZ, :
 :
 Petitioner, :
 :
 To Review Under Section 101 of the Labor Law: :
 Three Orders to Comply With Article 6 of the Labor :
 Law, an Order to Comply With Article 19 of the Labor :
 Law, and an Order Under Articles 6 and 19 of the :
 Labor Law, each dated September 20, 2011, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 11-403

RESOLUTION OF DECISION
ON MOTION FOR
RECONSIDERATION

APPEARANCES

The Scher Law Firm, LLP (Austin Graff of counsel), for the petitioner.

WHEREAS:

On November 21, 2011, the petitioner, who was *pro se* at the time, filed with the Industrial Board of Appeals a petition for review of orders issued by Respondent Commissioner of Labor (Commissioner); however, copies of the orders were not attached. By letter dated January 26, 2012 enclosing a copy of the Board's Rules of Practice and Procedure (Rules) (12 NYCRR Part 66), the Board directed the petitioner 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 February 28, 2012, or the appeal may be dismissed without further notice.

By Resolution of Decision dated July 16, 2012, the Board dismissed this matter due to the petitioner's failure to comply with the Board's directive to file an amended petition on or before February 28, 2012. The petitioner filed a Motion for Reconsideration

dated August 9, 2012, with an amended petition attached, stating that he had mistakenly thought his accountant had filed the amended petition. The motion was unopposed¹. Since the original petition appears to have been otherwise timely filed and we believe that the pro se petitioner mistakenly understood that an amended petition had been 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 July 16, 2012 is revoked; and
3. The petitioners' petition filed on November 21, 2011 is reinstated; and
4. The Board accepts the amended petition attached to the motion for reconsideration; and
5. The Commissioner of Labor's response to the amended petition shall be filed with the Board within 35 days of service of this decision.



Anne P. Stevason, Chairman

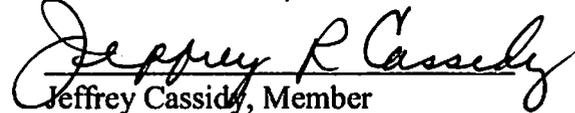


J. Christopher Meagher, Member



Jean Grumet, Member

LaMarr J. Jackson, Member



Jeffrey Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
October 17, 2012.

¹Board Rule 65.41 (b) (12 NYCRR 65.41 [b]) requires any party opposing a motion for reconsideration to file such opposition within ten days of receipt of the motion. As of the date of this decision, the respondent has not filed any opposition to the petitioner's motion for reconsideration.

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Anne P. Stevason, Chairman

J. Christopher Meagher, Member

Jean Grumet, Member



LaMarr J. Jackson, Member

Jeffrey Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
October 17, 2012.

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