

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :  
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HASSAN OSMAN AND ADEL FATHELBAB AND :  
BAHAA ELANSARY AND MOATAZ BELLA :  
MAHMOUD AND Z-ONE DINER & LOUNGE INC. :  
(T/A Z ONE), : DOCKET NO. PR 15-338  
 :  
Petitioners, : RESOLUTION OF DECISION  
 : DENYING RECONSIDERATION  
 : AND REINSTATEMENT  
To Review Under Section 101 of the Labor Law: An :  
Order to Comply with Article 19 and an Order Under :  
Articles 5 and 19 of the Labor Law, both dated August :  
26, 2015, :  
 :  
- against - :  
 :  
THE COMMISSIONER OF LABOR, :  
 :  
Respondent. :  
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**APPEARANCES**

*Robert J. Fileccia*, Staten Island, for petitioners.  
  
*Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (Steven J. Pepe of counsel)*, for respondent.

**WHEREAS:**

By Resolution of Decision, dated January 25, 2017, we dismissed the above-captioned matter because petitioners failed to appear at a hearing held, upon notice to the parties, on October 6, 2016. Our decision was served on the parties on January 27, 2017. On October 6, 2017, petitioners filed an application pursuant to CPLR § 5015 and Board Rule (12 NYCRR) § 65.1 (b) to reinstate the proceeding, vacate the default judgment, and to stay enforcement of the judgment pending a hearing. Respondent Commissioner of Labor opposes the application because it was untimely and no extraordinary circumstances exist to excuse the late filing of petitioners' application. We agree with respondent, and as discussed below, petitioners' application is denied.

Board Rule (12 NYCRR) § 65.24 provides that:

“(a) Subject to the provisions of subdivision (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a

waiver of all rights except the rights to be served with a copy of the decision of the board and to request board review pursuant to section 65.41 of this Part.

“(b) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing.

“(c) The Board upon a showing of good cause, may excuse such failure to appear, and in such event the hearing will be reopened.”

Petitioners arrived at our offices more than an hour late for a hearing that was scheduled, by notice of hearing, for 9:30 a.m. on October 6, 2016. Petitioners arrived approximately 30 minutes after the hearing officer had closed the record at 10:02 a.m. and dismissed the court reporter and Spanish language interpreter.<sup>1</sup> The Board, having held the record open for 30 minutes, and not hearing from petitioners for more than 15 weeks, closed the record and the proceeding was dismissed on January 25, 2017, pursuant to Board Rule (12 NYCRR) § 65.24 for failure to appear. Pursuant to Rule § 65.24 petitioners were required to file an application for reinstatement within five days of the scheduled hearing except in the event of extraordinary circumstances. Petitioners allege that traffic conditions caused them to be late for the hearing and that they attempted to call the Board the morning of the hearing. Bad traffic is not an extraordinary circumstance sufficient to explain why petitioners did not file their application for reinstatement until one year after the scheduled hearing, and more than eight months from service of the decision dismissing the proceeding. We find the request for reinstatement is untimely and deny the application to reinstate the petition and reopen the hearing.

Petitioners have also provided no justification for reconsideration of our decision dismissing the proceeding. While there is no time fixed by the Board’s rules for bringing an application for reconsideration pursuant to Board Rule (12 NYCRR) § 65.41, we decline in this matter to exercise our discretion to grant reconsideration where the application was brought more than eight months from service of the decision, and six months after the statute of limitations for judicial review had expired (Labor Law § 102 [1] [60 day statute of limitations for judicial review of Board decision]).

The other grounds alleged by petitioners as a basis for the Board to suspend application of our rules pursuant to Board Rule (12 NYCRR) § 65.1 are unpersuasive. We decline to suspend our rules pursuant to Board Rule § 65.1 (b) to allow petitioners, on the facts of this case, to seek reinstatement of the petition one year after the scheduled hearing. Furthermore, CPLR § 5015 is not applicable to the Board (*see e.g. Matter of Roy A. Dean et al.*, PR 14-207 [March 11, 2015] [Board as a quasi-judicial state executive agency is governed by its own rules, not the CPLR, which governs proceedings in state courts]). The application is denied.

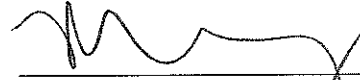
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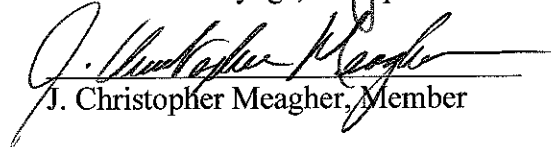
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<sup>1</sup> The court reporter and interpreter were provided by an outside vendor pursuant to a state contract. The Board does not employ court reporters or interpreters.


**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**


Petitioners' application is denied.

  
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Vilda Vera Mayuga, Chairperson

  
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J. Christopher Meagher, Member

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Michael A. Arcuri, Member

  
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Molly Doherty, Member

  
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Gloribelle J. Perez, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
in New York, New York, on  
December 13, 2017.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

Petitioners' application is denied.

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Vilda Vera Mayuga, Chairperson

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J. Christopher Meagher, Member



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Michael A. Arcuri, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
in Syracuse, New York, on  
December 13, 2017.

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Molly Doherty, Member

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Gloribelle J. Perez, Member