

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :  
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 SERGE DURKA AND CAFÉ CRÈME BRASSERIE :  
 LTD., :  
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 :  
 Petitioners, : DOCKET NO. PR 16-103  
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 To Review Under Section 101 of the Labor Law: : RESOLUTION OF DECISION  
 Two 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 5, 6 and 19 of the :  
 Labor Law, all dated June 30, 2016, :  
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 :  
 - against - :  
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 :  
 THE COMMISSIONER OF LABOR, :  
 :  
 :  
 Respondent. :  
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**APPEARANCES**

*Serge Durka*, petitioner pro se, and for Café Crème Brasserie Ltd.

*Pico Ben-Amotz*, General Counsel, NYS Department of Labor, Albany (*Taylor A. Waites* of counsel), for respondent.

**WHEREAS:**

Upon notice by the Board to the parties dated October 13, 2016, a hearing was scheduled for February 15, 2017, which petitioners failed to attend. Pursuant to Labor Law § 103 and Board Rules (12 NYCRR) § 65.30, the burden of proof is on petitioners to prove that the orders under review are not valid or reasonable. Since petitioners failed to attend the hearing, their petition was dismissed pursuant to Board Rules (12 NYCRR) § 65.24, by Resolution of Decision dated June 14, 2017.

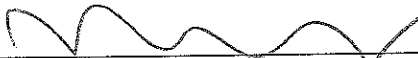
The Board's decision was served on the parties on June 19, 2017, and on August 16, 2017, petitioners sought reconsideration of the Board's decision of June 14, 2017. Petitioners argue that the proceeding before the Board was automatically stayed pursuant to 11 U.S.C. § 362 as of October 20, 2016, the date in which Durka filed for bankruptcy. Petitioners conclude that the Board's dismissal of their petition due to petitioners' failure to appear "is void and of no legal effect."

Respondent Commissioner of Labor opposes petitioners' application for reconsideration on grounds that the automatic stay provision of the Bankruptcy Code does not apply to proceedings before the Board. We agree with respondent and, as discussed below, deny petitioners' application.

Board Rule (12 NYCRR) § 65.41 provides, in part, that applications 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." Here, petitioners have not stated reasons to justify their failure to appear at the February 15, 2017 hearing, nor have they provided a legally justifiable reason to reconsider the June 14, 2017 decision pursuant to Board Rule (12 NYCRR) § 65.41. The automatic stay provision of the Bankruptcy Code does not preclude the Board from deciding petitioners' appeal of the orders issued by the Commissioner. As we have previously held, bankruptcy proceedings have no bearing on the reasonableness and validity of orders issued by the Commissioner, but are only relevant to their eventual enforcement (*see e.g. Matter of Kerber and World Media, Inc.*, Docket No. PR 08-170 [October 21, 2009]; *see also Jason Ellis and Cakes by Jay, Inc.*, Docket No. PR 11-245 [Jan. 30, 2012]). Accordingly, we dismiss petitioners' application for reconsideration.

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


Petitioners' application for reconsideration is denied and our decision of June 14, 2017 is confirmed.

  
Vilda Vera Mayuga, Chairperson

  
J. Christopher Meagher, Member

Michael A. Arcuri, Member

  
Molly Doherty, Member

  
Gloribelle J. Perez, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
in New York, New York,  
on March 7, 2018.

Respondent Commissioner of Labor opposes petitioners' application for reconsideration on grounds that the automatic stay provision of the Bankruptcy Code does not apply to proceedings before the Board. We agree with respondent and, as discussed below, deny petitioners' application.

Board Rule (12 NYCRR) § 65.41 provides, in part, that applications 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." Here, petitioners have not stated reasons to justify their failure to appear at the February 15, 2017 hearing, nor have they provided a legally justifiable reason to reconsider the June 14, 2017 decision pursuant to Board Rule (12 NYCRR) § 65.41. The automatic stay provision of the Bankruptcy Code does not preclude the Board from deciding petitioners' appeal of the orders issued by the Commissioner. As we have previously held, bankruptcy proceedings have no bearing on the reasonableness and validity of orders issued by the Commissioner, but are only relevant to their eventual enforcement (*see e.g. Matter of Kerber and World Media, Inc.*, Docket No. PR 08-170 [October 21, 2009]; *see also Jason Ellis and Cakes by Jay, Inc.*, Docket No. PR 11-245 [Jan. 30, 2012]). Accordingly, we dismiss petitioners' application for reconsideration.

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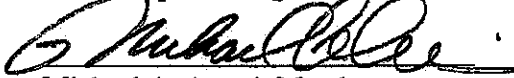
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Michael A. Arcuri, Member

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Molly Doherty, Member

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