

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
SERGE DURKA AND CAFÉ CRÈME BRASSERIE :
LTD., :
 :
 :
Petitioners, : DOCKET NO. PR 16-103
 :
 :
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, :
 :
 :
- against - :
 :
 :
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.

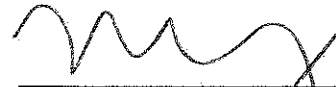
WHEREAS:

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 (Board Rules) (12 NYCRR) Part 66 on August 25, 2016; and
2. Respondent Commissioner of Labor filed an answer to the petition on September 29, 2016; and
3. Upon notice by the Board to the parties dated October 13, 2016, a hearing was scheduled for February 15, 2017; and
4. Petitioners failed to attend or otherwise appear at the February 15, 2017 hearing; and
5. 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; and

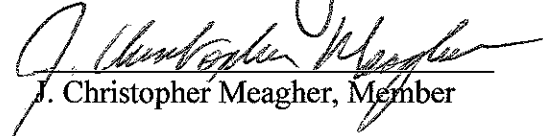
6. Pursuant to Board Rules (12 NYCRR) § 65.24, “the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review pursuant to Rule 65.41,” unless application for reinstatement is made within five days after the scheduled hearing; and
7. Petitioners have not made any application for reinstatement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition for review be, and the same hereby is, dismissed in accordance with the Board’s Rules.

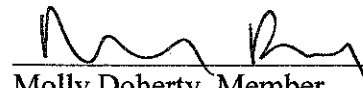


Vilda Vera Mayuga, Chairperson

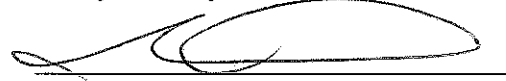


J. Christopher Meagher, Member

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 June 14, 2017.

6. Pursuant to Board Rules (12 NYCRR) § 65.24, "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 Rule 65.41," unless application for reinstatement is made within five days after the scheduled hearing; and
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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York,
on June 14, 2017.