

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:	
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JOSEPH SILVESTRO AND 96 VREELAND	:	
STREET CORP. (T/A ROSAMARIA BAKERY),	:	
	:	
Petitioners,	:	DOCKET NO. PR 16-130
	:	
To Review Under Section 101 of the Labor Law:	:	<u>RESOLUTION OF DECISION</u>
An Order to Comply with Article 19 of the Labor Law :	:	
and an Order Under Articles 5 and 19 of the Labor	:	
Law, both dated September 12, 2016,	:	
	:	
- against -	:	
	:	
THE COMMISSIONER OF LABOR,	:	
	:	
Respondent.	:	
-----X	:	

**APPEARANCES**

*Robert Prignoli Attorney At Law*, Staten Island (*Robert Prignoli* of counsel), for petitioners.

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

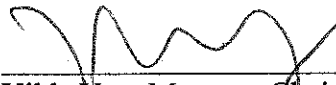
**WHEREAS:**

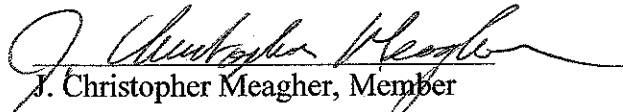
1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals’ Rules of Procedure and Practice (Board Rules) (12 NYCRR) Part 66 on November 9, 2016; and
2. Respondent Commissioner of Labor filed an answer to the petition on December 22, 2016; and
3. Upon notice by the Board to the parties dated January 12, 2017, a hearing was scheduled for March 31, 2017; and
4. On March 28, 2017, and supplemented on March 30, 2017, petitioners notified the Board that due to the medical condition of one petitioners’ witnesses, petitioners were unable to proceed with the hearing on March 31, 2017 and requested an adjournment; and
5. On March 30, 2017, the hearing officer denied petitioners’ request for an adjournment and advised that an additional day of hearing to accommodate testimony from petitioners’ witness would be discussed at hearing on March 31, 2017; and

6. On March 30, 2017, petitioners renewed their adjournment request based on their contention that the witness who was unable to attend the March 31, 2017 hearing was the employer as stated in their petition, and that any Board finding otherwise prior to a hearing was prejudicial to petitioners' appeal; and
7. On March 30, 2017, the hearing officer responded that the order to comply was issued against petitioners Joseph Silvestro and 96 Vreeland Street Corp., and not the individual listed as having an illness that prevented attending the hearing scheduled for March 31, 2017, and that the issue of who was the employer would be decided by the full Board after the conclusion of the hearing and a review of the record. The hearing officer further stated that the hearing would go forward the following day as scheduled, and additional testimony would be scheduled on a future date when the witness was able to testify; and
8. Petitioners failed to attend or otherwise appear at the March 31, 2017 hearing; and
9. 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
10. 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
11. Petitioners have not made any application for reinstatement.

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

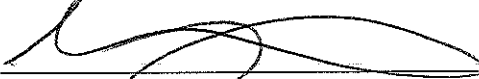
The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.

  
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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  
May 3, 2017.

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Michael A. Arcuri, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
in Utica, New York, on  
May 3, 2017.

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Molly Doherty, Member

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Gloribelle J. Perez, Member