

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

DEBASHIS S. DAS A/K/A BOB DAS AND
CLEAN-O-MATIC, INC.,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6 of the Labor Law,
an Order to Comply with Article 19 of the Labor Law,
and an Order Under Article 19 of the Labor Law, all
dated July 20, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-283

RESOLUTION OF DECISION

APPEARANCES

Peter A. Joseph, Esq., for petitioners.

Pico Ben-Amotz, Esq., General Counsel, NYS Department of Labor (Steven J. Pepe 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 (Rules) (12 NYCRR Part 66) on September 14, 2015; and
2. Respondent Commissioner of Labor filed an answer to the petition on October 23, 2015; and
3. Upon notice to the parties, dated November 4, 2015, a prehearing conference was scheduled for December 14, 2015, and a hearing was scheduled for January 15, 2016; and
4. At the prehearing conference, we granted leave to petitioners to file an amended petition and adjourned the hearing to March 22, 2016 at 10:00 a.m. in New York, New York; and
5. On January 14, 2016, petitioners served and filed an amended petition; and
6. A hearing was held on March 22, 2016 in New York, New York at 10:00 a.m.; and

7. Petitioners' attorney appeared at the hearing, but petitioners were not present and petitioners' attorney called no witnesses and was therefore not able to present any evidence; and
8. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on petitioners to prove that the orders under review are not valid or reasonable; and
9. Pursuant to Board Rule 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
10. By letter dated March 22, 2016, filed with the Board but incorrectly addressed to respondent's general counsel, petitioners requested reinstatement on the ground that petitioner Debashis S. Das was unable to appear at hearing because he was the only person who could open his business the day of the hearing at 6:30 a.m.; and
11. Petitioners have not established good cause for their failure to attend the hearing; and
12. Petitioners, having failed to establish good cause to appear at a scheduled hearing, have failed to meet their burden of proof in this proceeding and waived all rights except to be served with a copy of this decision.

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
LaMarr J. Jackson, Member
Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in Albany, New York
on April 13, 2016.