

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ELEANOR CAPOGROSSO AND ELEANOR
CAPOGROSSO ATTORNEY AT LAW, PLCC,
AND ELEANOR CAPOGROSSO, LLC,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6, and an Order
Under Article 19 of the Labor Law, both dated
October 2, 2014,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 14-310

RESOLUTION OF DECISION

APPEARANCES

Eleanor Capogrosso, petitioner pro se, and for Eleanor Capogrosso Attorney at Law, PLCC and Eleanor Capogrosso, LLC.

Pico Ben-Amotz, Esq., General Counsel, NYS Department of Labor (John-Raphael Pichardo, of counsel), for respondent.

WHEREAS:

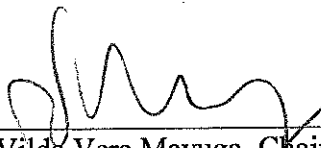
1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on December 2, 2014; and
2. An amended petition was filed by Russell S. Moriarty, Esq. on petitioners' behalf on July 15, 2015; and
3. Respondent Commissioner of Labor filed an answer to the petition on November 12, 2015; and
4. Upon notice by the Board to the parties dated December 1, 2015, a prehearing conference was set for March 14, 2016, and a hearing was set for May 4, 2016; and
5. On March 11, 2016, Mr. Moriarty notified the Board, pursuant to Board Rule 65.8(c) that he

was no longer representing petitioners and that he had provided petitioners with the Hearing and Pre-Hearing Notice; and

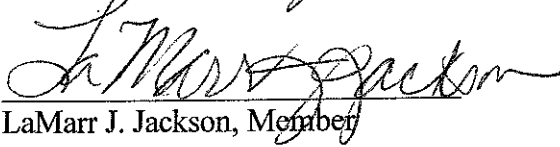
6. Petitioners failed to participate in the prehearing conference on March 14, 2016; and
7. Because petitioners failed to participate in the prehearing conference, we sent a letter dated March 16, 2016 to petitioners' address of record giving them an opportunity to reschedule the pre-hearing conference. This letter also reminded petitioners of the scheduled hearing on May 4, 2016, and stated that failure to appear at the hearing would result in a default decision by the Board; and
8. Petitioners sent a letter to the Board dated May 2, 2016, which the Board received on May 4, 2016, stating that they would not be attending the hearing; and
9. Petitioners failed to attend or otherwise appear at the hearing; and
10. 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
11. 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
12. 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


LaMarr J. Jackson, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on May 25, 2016.


Michael A. Arcuri, Member

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Michael A. Arcuri, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York on
May 25, 2016.