

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

FLETCHER A. BROTHERS AND GATES  
COMMUNITY CHAPEL OF ROCHESTER, INC.  
D/B/A FREEDOM VILLAGE USA, INC.,

Petitioners,

To Review Under Section 101 of the Labor Law:  
An Amended and Reissued Order to Comply with  
Article 6 of the Labor Law and an Order to Comply  
with Article 19 of the Labor Law, both dated  
December 10, 2018,

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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DOCKET NO. PR 19-022

RESOLUTION OF DECISION

**APPEARANCES**

*Dibble & Miller, P.C.*, Rochester, (*John J. Jakubek* of counsel), for petitioners.

*Pico P. Ben-Amotz*, General Counsel, NYS Department of Labor, Albany (*Steven J. Pepe* of counsel), for respondent.

**WHEREAS:**

The above proceeding was commenced on February 11, 2019, when petitioners Fletcher A. Brothers and Gates Community Chapel of Rochester, Inc. D/B/A Freedom Village USA, Inc., filed a petition for review pursuant to Labor Law § 101 and the Industrial Board of Appeals Rules of Procedure and Practice (hereinafter "Board Rules") (12 NYCRR) Part 66 challenging an Order to Comply with Article 6 of the Labor Law and an Order to Comply with Article 19 of the Labor Law (hereinafter "amended and reissued orders") issued against them by the respondent, Commissioner of Labor.

On April 24, 2019, respondent moved to dismiss the petition pursuant to Board Rule (12 NYCRR) § 65.13 (d) (1) (i) and (iii) because the petition (1) fails to state clearly and concisely the ground on which the matter to be reviewed is alleged to be invalid or unreasonable as the petition only addresses issues regarding enforcement of the order, and (2) because the orders were already appealed and litigated before the Board resulting in a final decision. On April 26, 2019, the Board set forth a motion schedule with petitioners' response to the motion due on or before May 27,

2019. To date, the Board has received no such response from petitioners. After review of the papers filed by the parties in this matter, respondent's motion, which is unopposed, is granted, and the petition is dismissed.

First, petitioners did not file any opposition to respondent's motion. Second, the Board agrees that the petition fails to state clearly and concisely the ground on which the matter is alleged to be invalid or unreasonable. The petition alleges that because petitioners filed for bankruptcy, the respondent was precluded from issuing the subject amended and reissued orders. The automatic-stay provision of the Bankruptcy Code does not preclude the Board from deciding an appeal of an order to comply issued by respondent. The Board's role is to decide whether the Commissioner's order is unreasonable or invalid, not to rule on how it may be enforced. (*Matter of Gregory G. Kerber and Wurld Media, Inc.*, Docket No. PR 08-170, at pp. 2-4 [October 21, 2009]; see also *Matter of Ralph T. Pescrillo, Pescrillo Niagara, LLC and Pescrillo New York, LLC (T/A Ralph T. Pescrillo Development)*, Docket No. PR 16-155, at p. 10 [January 30, 2019]; *Matter of Maddi, MD and Joseph L. Maddi, Physician, P.C.*, Docket No. PR 10-301, at p. 2 [February 27, 2014]).

Third, the facts and issues in the amended and reissued orders have already been litigated and decided by the Board. In *Matter of Fletcher A. Brothers and Gates Community Chapel of Rochester, Inc. D/B/A Freedom Village USA, Inc.*, Docket No. PR 15-059 [June 6, 2018], the Board directed respondent to amend and reissue the December 31, 2014 orders consistent with the Board's decision and affirmed those orders, as amended. It is those amended and reissued orders already affirmed by the Board that are the subject of this proceeding. The Board's previous decision is final except that such decision shall be subject to appeal under Article 78 of the Civil Practice Law and Rules for judicial rule (see Labor Law § 102; *Matter of Roslyn Rogers*, Docket No. PR 16-067, at p. 2 [January 25, 2017] (affirming respondent's motion to dismiss where orders under review were previously litigated before and decided by the Board in *Matter of Roslyn Rogers and Gothic Plastics LCC (T/A Gothic Plastics)*, Docket No. PR 10-333 [June 12, 2013])).

Accordingly, respondent's motion is granted, and the petition is dismissed.

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


The petition for review be, and the same hereby is, denied.



Molly Doherty, Chairperson  
New York, New York

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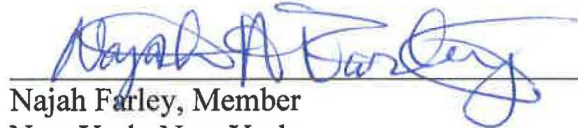
Michael A. Arcuri, Member  
Utica, New York



Gloribelle J. Perez, Member  
New York, New York



Patricia Kakalec, Member  
New York, New York




Najah Farley, Member  
New York, New York

Dated and signed by the Members  
of the Industrial Board of Appeals  
on September 11, 2019.

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

The petition for review be, and the same hereby is, denied.

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Molly Doherty, Chairperson  
New York, New York

  
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Michael A. Arcuri, Member  
Utica, New York

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Gloribelle J. Perez, Member  
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Patricia Kakalec, Member  
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Najah Farley, Member  
New York, New York

Dated and signed by the Members  
of the Industrial Board of Appeals  
on September 11, 2019.