

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:	
	:	
JOEL SCHER AND EVENT LOCATIONS, INC.	:	
(T/A LOCATIONS MAGAZINE),	:	
	:	
Petitioners,	:	DOCKET NO. PR 15-409
	:	
To Review Under Section 101 of the Labor Law:	:	<u>RESOLUTION OF DECISION</u>
An Order to Comply with Article 6 of the Labor Law,	:	
dated November 6, 2015,	:	
	:	
- against -	:	
	:	
THE COMMISSIONER OF LABOR,	:	
	:	
Respondent.	:	
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APPEARANCES

Peter Rutherford, Florida, applicant pro se.

Goldberg and Weinberger LLP, Redding, Connecticut (*Lewis Goldberg* of counsel), for petitioners.

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

WHEREAS:

On December 31, 2015, petitioners Joel Scher and Event Locations, Inc. (T/A Locations Magazine) filed with the Board a petition seeking review of an order issued by respondent Commissioner of Labor on November 6, 2015. By letter dated June 16, 2016, respondent notified the Board that the parties had entered into a stipulation of settlement. By the terms of the stipulation, petitioners withdrew their petition for review. By a July 13, 2016, resolution of decision, the Board approved the withdrawal of the petition and discontinued the proceeding.

Pursuant to Board Rules of Procedure and Practice (Board Rules) (12 NYCRR) § 65.41, on March 1, 2017, applicant Peter Rutherford, who was the claimant in respondent's underlying enforcement action, filed a motion with the Board seeking reconsideration of its July 13, 2016, resolution of decision. Applicant amended the application on April 28, 2017, to allege that respondent failed to properly review his claim of Labor Law violation.

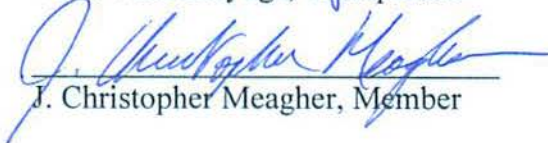
While the terms of Board Rules (12 NYCRR) § 65.41 do not bar Rutherford—as a claimant—from seeking reconsideration of the Board’s July 13, 2016, decision, the Board denies his application on other grounds. Article 3 of the Labor Law provides that “any person in interest . . . may petition the [B]oard for a review of the validity or reasonableness of any rule, regulation or order made by the [C]ommissioner,” (Labor Law § 101 [1]). Board Rules (12 NYCRR) § 65.42 provides for settlement of a petition, which must be submitted to the Board in writing or entered on the record at hearing. At any point during the proceeding, subject to the Board’s approval, the petitioner may withdraw the petition (*id.* § 65.15). Because the parties stipulated to settlement, and petitioners sought leave from the Board to withdraw their petition, which the Board duly approved, there is currently “no rule, regulation or order” before the Board for it to reconsider (Labor Law § 101). Therefore, Rutherford’s application for reconsideration must be denied.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The application for reconsideration is denied.



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
July 26, 2017.