

New York State  
Industrial Board of Appeals

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STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
JULY 4 EVER, INC. AND VINCENT ESPOSITO,	:
	:
Petitioners,	:
	:
To review under Sections 101 and 463 of the New York	:
State Labor Law: An Order and Determination of the	:
Commissioner of Labor issued April 15, 2008	:
	:
-against-	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
-----X	

DOCKET NO. SA-08-002  
(PES-08-003)

INTERIM RESOLUTION  
ON STAY APPLICATION

WHEREAS:

The Petition in the above-captioned case was filed with the Industrial Board of Appeals (Board) on June 13, 2008 seeking review of the Order and Determination of the Commissioner of Labor (Commissioner) issued on April 15, 2008. In the proceedings below, after an evidentiary hearing, the Commissioner adopted the Report, Recommendations and Order of the Hearing Officer that July 4 Ever, Inc. and Vincent Esposito's License to Deal or Manufacture Explosives and its three Explosive Magazine Certificates be revoked. The Petition contests the reasonableness and validity of the Order and Determination and requests an expedited proceeding. On July 25, 2008 Respondent answered the Petition.

A case management conference was held by phone on July 28, 2008 at which time a date was set for the filing of the record of the proceedings below, and a second case management conference was set for August 26, 2008.

On August 11, 2008 Petitioners July 4 Ever, Inc. and Vincent Esposito (Petitioners) filed an Application for a Stay of License Revocation along with a supporting affidavit. In their Application, Petitioners argue that revocation is too harsh a remedy for its alleged violations and that a stay is necessary so that the Board can carefully review the record and arguments. It further argues that the Commissioner's decision, if allowed to stand, "will have the effect of putting Petitioner out of business in New York State."

On August 14, 2008, the Commissioner filed an Affirmation in Opposition to Petitioners' Application. In it she argues that Petitioners have failed to establish the criteria necessary for the Board to grant a stay and that Petitioners are merely arguing the merits of the case.

On August 26, 2008, a second case management conference was held at which time a briefing schedule was set on the merits for the underlying case and it was set for oral argument before the entire Board at its October meeting on October 22, 2008.

The Board has discretion to grant a stay of an order on review. Board Rule 66.9 (12 NYCRR 66.9) provides, in pertinent part, that:

"Such discretion may be exercised, if at all, upon written application therefore, which application shall be supported by affidavits, documentary evidence, or other evidence demonstrating the necessity for such stay, the financial responsibility of the applicant when relevant, and that the grant of such stay will not unduly prejudice any employee, the public or the Department of Labor."

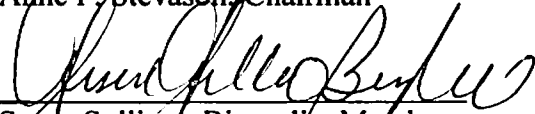
The arguments raised by Petitioners in its Application for a Stay address the reasonableness and validity of the underlying Order of revocation. They do not address the factors enumerated in Rule 66.9. The Application has failed to provide the Board with a basis for granting a stay.

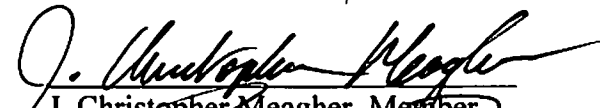
The Board has acted on Petitioners' request to expedite the proceedings in this case. The case should be completely briefed and argued by October 22, 2008. The Board finds, in its discretion, that after considering all of the facts and arguments presented herein, the Petitioners' Application for Stay should be denied.


NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

Petitioners' Application for Stay of the Order of Revocation be denied.

  
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Anne P. Stevason, Chairman

  
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Susan Sullivan-Bisceglia, Member

  
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J. Christopher Meagher, Member

  
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Mark G. Pearce, Member

  
\_\_\_\_\_  
Jean Grumet, Member

Dated in the Office of the  
Industrial Board of Appeals,  
At New York, New York,  
on September 24, 2008.