

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
ALAN GOLDSCHLAGER and BROADWAY 159	:
WINE AND SPIRITS, INC.,	:
	:
Petitioners,	:
	:
To Review Under Section 101 of the Labor Law:	:
An 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 4, 2008,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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DOCKET NO. PR 09-025
INTERIM
RESOLUTION OF DECISION

APPEARANCES

Anthony Agrippina, Esq., for Petitioners.

Maria L. Colavito, Counsel to the New York State Department of Labor, Benjamin T. Garry, of Counsel, for Respondent.

WHEREAS:

The Petition for review in the above-captioned case was received by the Industrial Board of Appeals (Board) on February 4, 2009. The Petition seeks review of two Orders issued by the Commissioner on December 4, 2008 on the grounds that the Petitioners (1) did not have opportunity to be represented by counsel at a fair hearing; (2) the Petitioners would like to be represented by counsel at a fair hearing; (3) the Petitioners were seriously and irreparably prejudiced by not having counsel at the hearing; and (4) the Petitioners were not aware that they were at a hearing where a decision would be made; (5) the Petitioners did not understand what happened at the hearing; (6) the Petitioners were not aware of what transpired at the hearing; (7) the Petitioners did not have an adequate opportunity to review and understand the documentation at the hearing; (8) the Petitioners were not given the opportunity to validly discuss each of the employees and their duties within the organization; and (9) the Petitioners feel that the decision is both unreasonable and invalid and that they are entitled to an appeal so that they may be adequately represented in this matter.

The Department of Labor (DOL) filed a motion to dismiss the Petition on April 6, 2009, on the ground that the Petition alleges no grounds upon which the Commissioner's Orders of December 4, 2008 can be found invalid or unreasonable. The Petitioners did not oppose DOL's motion.

We agree that the Petition does not state any grounds upon which the Orders can be found invalid or unreasonable, and note that an appeal to the Board is the Petitioners' opportunity to challenge the Orders at a formal evidentiary hearing with counsel. Accordingly, we grant leave to the Petitioners to file an Amended Petition that conforms to the Board's Rules of Procedure and Practice, 12 NYCRR part 65 et seq, specifically Board Rule 66.3 (e), 12 NYCRR 66.3 (e), which provides that the Petition shall "state clearly and concisely the grounds on which the matter to be reviewed is alleged to be invalid or unreasonable, omitting conclusions of fact and law." Accordingly, the Petitioners must file an Amended Petition on or before September 28, 2009.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT

1. The Motion to Dismiss sworn to on April 2, 2009 is denied without prejudice.
2. The Petitioners shall file an Amended Petition on or before September 28, 2009.



Anne P. Stevason, Chairman



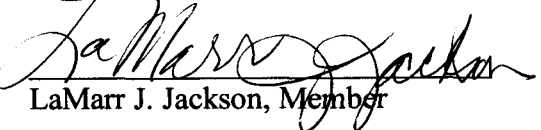
J. Christopher Meagher, Member



Mark G. Pearce, Member



Jean Grumet, Member



LaMarr J. Jackson, Member

Dated and signed in the Office of
the Industrial Board of Appeals,
at Albany, New York, on
August 27, 2009.