

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 JERWAINE GORMAN AND J. GORMAN :
 INVESTMENT GROUP, LLC, (T/A COLD :
 STONE CREAMERY), :
 :
 Petitioner, :
 :
 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 :
 September 9, 2009, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 09-249

RESOLUTION OF DECISION

APPEARANCES

Jerwaine Gorman, petitioner *pro se* and for J. Gorman Investment Group, LLC, petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates, 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) by Petitioners on August 22, 2011; and
2. Respondent Commissioner of Labor filed an answer to the petition on October 25, 2011; and
3. Upon notice by the Board to the parties, a hearing was set for March 1, 2012; and
4. On the morning of March 1, 2012 the Petitioners notified the Board by telephone that they were unable to appear at the hearing; and

5. Petitioners failed to attend or otherwise appear at the hearing; and
6. With the involvement and consent of Petitioner Jerwaine Gorman during a telephonic case management conference on March 1, 2012, the hearing was adjourned to March 12, 2012; and
7. Upon notice by the Board to the parties, a hearing was set for March 12, 2012. The Notice of Rescheduled Video Hearing stated that “absent exigent circumstances, no further adjournment will be granted;” and
8. On March 8, 2012, Petitioner Jerwaine Gorman notified the Board by telephone that when he “looked at the calendar, [he] realized that [he] had made other arrangements for that date and would not be available for the hearing”; and
9. By letter sent by facsimile to the parties on March 8, 2012, the Board denied Petitioners’ request for an adjournment stating that:

“Board Rule 65.23 states that postponement of a hearing ordinarily will not be allowed, and that ‘[e]xcept in the case of an emergency or in unusual circumstances, no request for postponement will be considered unless received in writing at least seven (7) days in advance of the time set for hearing.’ The conflict in scheduling that you raised...is not a valid ground for an adjournment. The Board rules further state that no postponement shall be allowed without the Board’s approval. The Board received no written notice requesting a postponement of a hearing date that was scheduled with your agreement, and no postponement will be granted in this case”; and

10. The Petitioners failed to attend or otherwise appear at the March 12, 2012 hearing; and
11. Pursuant to Labor Law §§ 101 and 103 and Board Rule 65.30, the burden of proof is on the Petitioners to prove that the Orders under review are not valid or reasonable; and
12. Pursuant to Board Rule 65.24, “the failure of a party to appear shall be deemed 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
13. The Petitioners have not made any application for reinstatement since the scheduled hearing.

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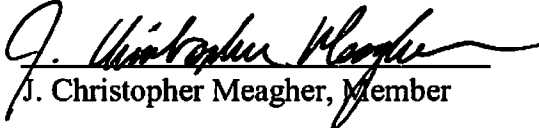
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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.



Anne P. Stevason, Chairperson

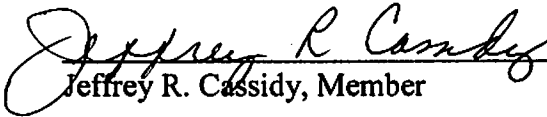


J. Christopher Meagher, Member



Jean Grumet, Member

LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 29, 2012.

