

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

AMBUSH ALARM & ELECTRONICS, INC,

Petitioner,

DOCKET NO. PR 11-264

To Review Under Section 101 of the Labor Law:
Order to Comply No. 11-00851 dated August 3, 2011,

RESOLUTION OF DECISION
ON MOTION FOR
RECONSIDERATION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Daniel Samela, CPA, for the petitioner.

Pico Ben-Amotz, Esq., Acting Counsel, NYS Department of Labor (Benjamin A. Shaw of counsel), for respondent.

WHEREAS:

On August 15, 2011, the petitioner filed a letter with the Board asking "...to receive a detailed breakdown of all charges to us." A copy of the Order to Comply No. 11-00851 dated August 3, 2011, was not attached to the August 15th letter. By letter dated September 12, 2011, enclosing a copy of the Board's Rules of Practice and Procedure (Rules) (12 NYCRR Part 66), the Board directed the petitioner to file an amended petition and a copy of the order(s) sought to be reviewed in accordance with the Rules. The letter directed the petitioner to file an amended petition on or before October 12, 2011, or the appeal could be dismissed without further notice.

No amended petition having been filed, the Board dismissed the matter by Resolution of Decision dated December 14, 2011. The petitioner by its accountant Daniel Samela, CPA, filed a letter dated April 3, 2012, that the Board received on April 10, 2012, requesting that the Board "reopen the case" because the clerical staff of petitioner did not follow through on the paperwork necessary for the appeal and the matter went unattended due to the absence of the president of the petitioner because of "an extrodianary [sic] amount of stress due to an impending divorce..." By letter dated April 16, 2012, counsel for the

Board advised petitioner of the proper means to apply for reconsideration under Board Rule 65.41 and of the need for submission of a designation of representative form if Mr. Samela was to represent petitioner.

Respondent obtained a judgment against petitioner on August 2, 2012, in Supreme Court, Kings County in the amount of \$43,010.09 and notice of that judgment was sent to Mr. Samela on September 27, 2012.

On October 22, 2012, the petitioner filed a Petition for Review dated July 26, 2012, that the Board treated as a Motion for Reconsideration. Respondent filed a Reply Affirmation on October 29, 2012, in opposition to Petitioner's request for reconsideration of the Board's Resolution of Decision dated December 14, 2011. The respondent opposes the motion for three reasons: "(1) The original Resolution terminating the proceeding was proper, (2) the Petitioner did not move for reconsideration in a timely manner and (3) the document now filed is still not a Petition, as it does not state grounds upon which it is alleged that the Orders are invalid or unreasonable."

Petitioner's excuses (including those set forth in petitioner's letter of November 30, 2012) for the failure to file an Amended Petition with a copy of the Order on or before October 5, 2011, are without merit. The petitioner failed to amend its petition in a timely fashion and then took months before requesting reconsideration. The Board will not reconsider its December 14, 2011, decision given petitioner's many opportunities to amend its petition and waiting significant periods of time between each action. Petitioner has put forth no sufficient reason that any of the time lapses were legitimate.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The petitioners' motion for reconsideration is denied; and
2. The Board's Resolution of Decision in this matter issued December 14, 2011, is affirmed.

Absent

Anne P. Stevason, Chairperson

J. Christopher Meagher

J. Christopher Meagher, Member

Jean Grumet

Jean Grumet, Member

LaMarr J. Jackson

LaMarr J. Jackson, Member

Jeffrey R. Cassidy

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
December 14, 2012.