

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JASON MOODIE, AND DAVID SANDBERG, :
AND AQUA MARLBOROUGH, LLC (T/A :
HUDSON VALLEY CAR WASH), :

Petitioners, :

DOCKET NO. PR 13-194

To Review Under Section 101 of the Labor Law: :
An Order to Comply with Article 19 and an Order :
Under Article 19 of the Labor Law, both dated :
October 31, 2013, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Jason Moodie and David Sandberg, petitioners *pro se* and for Aqua Marlborough, LLC (T/A Hudson Valley Car Wash), petitioner.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Benjamin T. Garry of counsel), for respondent.

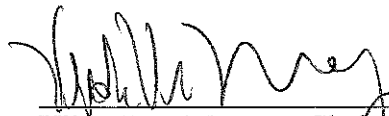
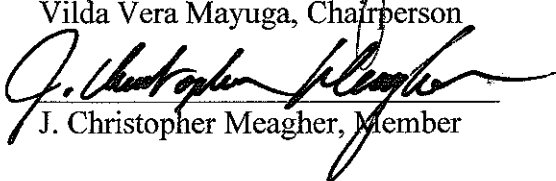
WHEREAS:

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) on December 6, 2013; and
2. Respondent filed its Answer on January 29, 2014; and
3. Notice of a Pre-Hearing Conference set for June 23, 2014 and Hearing set for July 24, 2014, was sent to the parties on June 3, 2014; and
4. The notice was returned by the United States Postal Service as not deliverable as addressed, unable to forward; and
5. A notice rescheduling the Pre-Hearing Conference from June 23, 2014 to July 11, 2014 was sent to the parties on July 3, 2014.
6. The notice was returned by the United States Postal Service as not deliverable as addressed, unable to forward; and

7. The petitioners did not provide a telephone number on their petition as required by Board Rule 65.4.
8. Board Rule 65.4 further provides that any change in contact information must be communicated promptly to the Board and failure to furnish such information shall be deemed a waiver of the right to notice and service under the Rules; and
9. Petitioners having failed to contact the Board to provide a correct address or phone number where the Board could contact them pursuant to Rule 65.4, were deemed to have abandoned their appeal, and the petition was dismissed by the Board in a decision on August 7, 2014; and
10. Petitioners were served with the Board's decision on August 21, 2014; and
11. The petitioners filed a new petition on October 10, 2014, asserting the same claims as their first petition and without addressing the dismissal of the first petition under Board Rule 65.4. Under Board Rule 65.24, the petitioners' failure to appear at their hearing could have been addressed by a request for reinstatement within five days after the scheduled hearing, in the absence of extraordinary circumstances, or upon the showing of good cause. The petitioners have failed to make a timely request for reinstatement and have also failed to show good cause for their failure to appear or for the untimely filing of the second petition on October 10, 2014, that was well past the date of the orders of October 31, 2013. The petition filed on October 10, 2014, is untimely and the petitioners have presented no basis for the Board to reinstate the petition of December 6, 2013.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition of October 10, 2014, be, and the same hereby is, dismissed in accordance with the Board's Rules, and the Board's decision of August 7, 2014, dismissing the petition of December 6, 2013, is affirmed.


Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Frances P. Abriola, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
January 28, 2015.

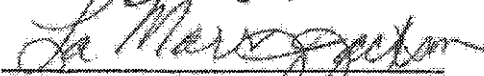
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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
January 28, 2015.

Michael A. Arcuri, Member

Frances P. Abriola, Member

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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member


Michael A. Arcuri, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
January 28, 2015.

Frances P. Abriola, Member

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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York, on
January 28, 2015.

Michael A. Arcuri, Member



Frances P. Abriola, Member