

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

RICHARD HARARY AND RAJO, INC. (T/A
RICHARD'S INTERIOR DESIGN),

Petitioners,

DOCKET NO. PR 14-042

To Review Under Section 101 of the Labor Law:
Two Orders to Comply with Article 6 of the Labor
Law and an Order Under Article 6 of the Labor Law,
all dated December 31, 2013,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Sheldon J. Fleishman, Esq., for petitioners.

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

WHEREAS:

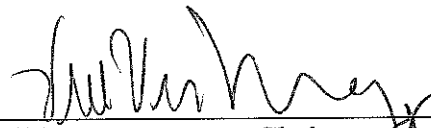
1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on March 5, 2014; and
2. Respondent Commissioner of Labor filed an answer to the petition on May 30, 2014; and
3. Upon notice by the Board to the parties dated August 12, 2014, a mandatory pre-hearing conference was held on September 10, 2014, and the hearing was set for September 30, 2014; and
4. At the mandatory pre-hearing conference, petitioners' attorney stated that his client Mr. Harary was to undergo a medical procedure the following week, and that he would promptly notify the Board and respondent's counsel if his client would require an adjournment of the hearing based on the results of the medical procedure. The Board received no communication from petitioners' counsel until after 3:30 p.m. on September 29, 2014, when

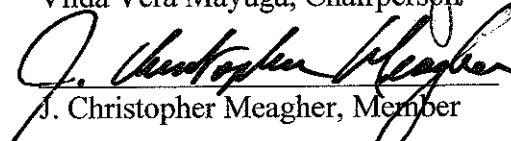
a letter was sent to the Board requesting an adjournment of the hearing scheduled for the next day due to Mr. Harary's "health related issues." The doctor's note supporting the request for the adjournment was deemed too generalized and speculative to justify the adjournment of the hearing and the Hearing Officer ordered the hearing to go forward; and

5. Petitioner Harary failed to attend or otherwise appear at the hearing and his counsel stated on the record that he would not go forward with petitioners' case other than noting his objection to the Board's not granting his request for an adjournment; and
6. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on the petitioner to prove that the orders under review are not valid or reasonable; and
7. Pursuant to Board Rule 65.24, "the failure of a party to appear at a hearing shall be deemed to be 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
8. The petitioner has not made any application for reinstatement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.



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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Frances P. Abriola, Member

Dated and signed by a Member
of the Industrial Board of Appeal
at Rochester, New York, On
January 28, 2015

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Frances P. Abriola, Member

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