

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

15 SWEET THING, INC.
(T/A DAKOTA BAR & GRILL),
Petitioner,

To review under Section 101 of the Labor Law:
Two Orders to Comply under Article 19 of the
Labor Law, dated January 27, 2006

- against -

THE COMMISSIONER OF LABOR,
Respondent.
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DOCKET NO. PR-06-015

RESOLUTION OF DECISION


WHEREAS:

1. Pursuant to Labor Law Section 101 and Part 66 of the Board's Rules of Procedure and Practice, on March 28, 2006, Petitioner commenced the above proceeding by filing a Petition for review of two Orders to Comply (Order) that Respondent issued on January 27, 2006; and
2. Respondent filed a Motion, dated April 27, 2006, to strike portions of the Petition, and thereafter, by letter dated June 12, 2006 a copy of Respondent's Motion was forwarded to Petitioner's attorney advising that any responding papers be received by June 23, 2006; and
3. The Respondent issued an Amended Order to Comply with Article 19 of the Labor Law on June 23, 2006; and
4. By letter dated July 13, 2006, and received by the Board on July 14, 2006, Petitioner filed an Affirmation in Opposition to Respondent's Motion, along with an Amended Petition; and
5. By Interim Resolution of Decision, dated July 19, 2006, Respondent's Motion was denied; and

6. Upon notice by the Board to the parties, a hearing was scheduled to be held May 15, 2007, in New York City, and at the request of the Petitioner's attorney was postponed; and
7. On August 15, 2007 the parties participated in a pre-hearing telephone conference held on behalf of the Board; and
8. Upon notice by the Board to the parties a hearing was scheduled to be held at 10:30 a.m. December 11, 2007, continuing on December 12, 2007 in New York City, and was held December 11, 2007; and
9. By letter dated December 11, 2007 and received by the hearing officer assigned to this case by facsimile at 9:30 a.m. on December 11, Mitchell G. Mandell, Esq., attorney of record for Petitioner, wrote that he had lost all communication with representatives of Petitioner and would, therefore, be unable to proceed with the scheduled hearing; and
10. Petitioner failed to attend or otherwise appear at the hearing; and
11. Pursuant to Labor Law § 103 and Board Rule § 65.30, the burden of proof is on the Petitioner to prove that an order under review is 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 of the scheduled hearing; and
13. No application for reinstatement of the hearing has been made to the Board after the above parties' failure to appear

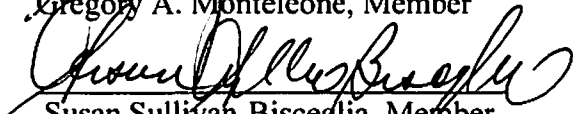
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

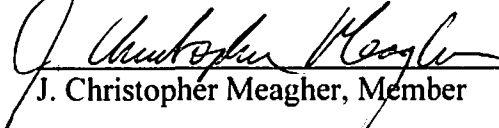
The above proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules of Procedure and Practice.


Anne P. Stevason, Chairman*


Mark S. Perla, Member


Gregory A. Monteleone, Member


Susan Sullivan-Bisceglia, Member


J. Christopher Meagher, Member

Dated and Filed in the Office of the
Industrial Board of Appeals,
at Albany, New York,
on December 19, 2007