

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X
 In the Matter of the Petition of: :
 :
 HEDY KODOGIANNIS and GUS KODOGIANNIS :
 and MCGUINNESS MANAGEMENT CORP., :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply with Labor Law Article 19 and :
 an Order under Labor Law Article 19, both dated July :
 16, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
 -----X

DOCKET NO. PR 10-278

RESOLUTION OF DECISION
ON APPLICATION FOR
RECONSIDERATION

APPEARANCES

Durkin & Durkin, LLP (Robert S. Cosgrove of counsel), for petitioners.

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

WHEREAS:

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 August 26, 2010. By letter, dated September 14, 2010, enclosing a copy of the Rules, the petitioner was requested to file an amended petition that included, *inter alia*, the specific reasons that such orders were alleged to be invalid or unreasonable (*see* Board Rules 66.3 [d]), on or before October 15, 2010.

By letters dated October 12, 2010, November 10, 2010, January 11, 2011, and February 10, 2010, the petitioner requested various extensions for filing the amended petition, the last being March 15, 2011, and informed the Board that it was engaged in settlement negotiations with the Respondent and was hopeful that a resolution could be reached.

Having heard nothing further from petitioner, the Board dismissed the petition for failing to file an amended petition by resolution of decision dated September 9, 2011.

On November 4, 2011, the Board received correspondence from counsel for the respondent informing the Board that the parties had resolved this matter along with the related case of PR 10-264 and were under the misimpression that both cases were being held in abeyance pending the parties' settlement negotiations. Enclosed with the letter was a copy of the fully executed Stipulation of Settlement in this matter. Respondent also requested that the Board reconsider the decision of September 9, 2011, which dismissed this matter, issue a decision in accordance with the parties' Stipulation, and approve the voluntary withdrawal of the petition by petitioner pursuant to the Stipulation.

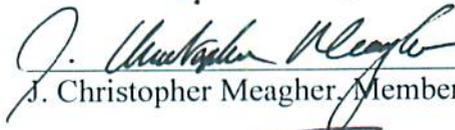
The Board's Rules of Procedure and Practice (Rules) 65.15 provide the "[a]t any stage of a proceeding, a party may withdraw his petition . . . subject to the approval of the Board. The Board approves the petitioners' withdrawal of the petition, finds that further review of the Order here is unnecessary, and that the proceeding should be discontinued.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The respondent's request for reconsideration is granted; and
2. The Board's Resolution of Decision in this matter issued September 9, 2011 is revoked; and
3. The Board approves petitioners' withdrawal of the petition per Stipulation of Settlement; and
4. The above proceeding be, and the same hereby is, discontinued in accordance with the Board's Rules.



Anne P. Steyason, Chairperson



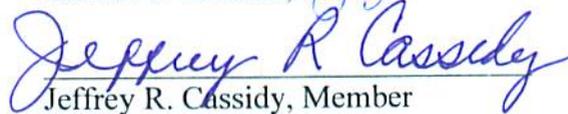
J. Christopher Meagher, Member



Jean Grumet, Member



LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
December 14, 2011.