STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

ABDUL BARI NASARY,

Petitioner,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Articles 6 and 19 of the Labor Law, dated February 26, 2019,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 19-035
RESOLUTION OF DECISION

APPEARANCES

Zamir Nasary, for petitioner.

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

WHEREAS:

The above proceeding was commenced on March 18, 2018, when petitioner Abdul Bari Nasary filed a petition for review pursuant to Labor Law § 101 and the Industrial Board of Appeals Rules of Procedure and Practice (Board Rules) (12 NYCRR) Part 66 challenging an Order to Comply with Articles 6 and 19 of the Labor Law, (hereinafter “order”) issued against the petitioner and Ann B. Nasary as well as 1156 Donut Enterprises Inc. T/A Dunkin Donuts by the respondent, Commissioner of Labor. The petition alleges that petitioner has had no involvement in the subject business since his divorce 10 years ago and that his ex-wife operates the subject business. As such, petitioner requested to be removed from respondent’s order. Abdul Bari Nasary is the sole petitioner in this case.

On March 27, 2019, the Board served the petition on respondent Commissioner of Labor. On June 6, 2019, the Board received a letter from respondent stating that respondent would be withdrawing the petitioner’s name from the order because, based on “a review of the case file, together with documents provided by the Petitioner, ... that the Petitioner was not an owner of the subject business during the Claimant’s period of employment.” The Board deems respondent’s letter to be a motion seeking leave to amend the order.
After review of the petition and correspondence, and after full consideration of the Board’s Rules of Procedure and Practice, the Board grants respondent’s letter motion and the order is amended to remove petitioner Abdul Bari Nasary’s name.

The underlying order named another individual and a corporate entity neither of which have petitioned the Board for review of the order pursuant to Labor Law § 101 (1). The underlying order as issued against those entities (Ann B. Nasary and 1156 Donut Enterprises Inc. T/A Dunkin Donuts) remains valid unless declared invalid in a proceeding before the Board under Labor Law § 103 (1). Thus, the Board grants the petition and revokes the order only as to the named individual Abdul Bari Nasary.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Effective as of the date of this Resolution of Decision, the Board grants respondent’s motion to amend the Order to Comply with Articles 6 and 19 of the Labor Law dated February 26, 2019, to remove Abdul Bari Nasary; and

2. The petition of Abdul Bari Nasary is granted.

Molly Doherty, Chairperson
New York, New York

Michael A. Arcuri, Member
Utica, New York

Gloribelle J. Perez, Member
New York, New York

Patricia Kakalec, Member
New York, New York

Najah Farley, Member
New York, New York

Dated and signed by the Members of the Industrial Board of Appeals on September 11, 2019.
After review of the petition and correspondence, and after full consideration of the Board’s Rules of Procedure and Practice, the Board grants respondent’s letter motion and the order is amended to remove petitioner Abdul Bari Nasary’s name.

The underlying order named another individual and a corporate entity neither of which have petitioned the Board for review of the order pursuant to Labor Law § 101 (1). The underlying order as issued against those entities (Ann B. Nasary and 1156 Donut Enterprises Inc. T/A Dunkin Donuts) remains valid unless declared invalid in a proceeding before the Board under Labor Law § 103 (1). Thus, the Board grants the petition and revokes the order only as to the named individual Abdul Bari Nasary.

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