STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: STANISLAV JOVANOVIC and AUTOPREVOZ TRUCKING CORP., Petitioners, To Review Under Section 101 of the Labor Law: An Order to Comply with Labor Law Article 6 and an Order under Article 19 of the Labor Law, both dated May 7, 2010, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 10-214 RESOLUTION OF DECISION REOPENING CASE

APPEARANCES

Stanislav Jovanovic, petitioner pro se and for Autoprevoz.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates of counsel), for respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on July 6, 2010. The petition was served on the respondent Commissioner of Labor (Commissioner) on July 12, 2010. The Commissioner moved on August 10, 2010 to dismiss the petition due to the fact that it fails to state a legally cognizable cause of action in that the retention of a security deposit and charges for damages to an employer's property are illegal deductions from wages under Labor Law § 193. The petitioners did not respond to the motion although we advised them in a letter dated August 13, 2010 that their response to the motion was to be filed on or before September 3, 2010.

On July 26, 2011, the Board issued a resolution of decision in this case mistakenly granting respondent's motion to dismiss and dismissing the petition as untimely, although respondent's motion to dismiss was based on failure to state a cause of action. In addition,

the decision cited the wrong dates for the filing of the petition and issuance of the orders to comply.

On December 1, 2011, petitioner requested a copy of the decision as well as his original petition. It was then noticed by the Board that the decision issued on July 26, 2011contained misinformation. By letter dated December 5, 2011, the Board informed the parties that it was reopening this case on its own motion pursuant to Board Rule 65.41(c) and that the decision issued in July is null and void.

The Board hereby reopens the case, revokes the decision of July 26, 2011 and directs petitioner to file an amended petition by January 27, 2012 setting forth the specific reasons for its appeal in accordance with Board Rule 66.3.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Board's Resolution of Decision in this matter issued July 26, 2011 is revoked; and

2. The case is reopened; and

3. The petitioners must file an amended petition with the Board on or before January 27, 2012.

Anne P. Stevason, 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.