

**Supreme Court of the State of New York  
Appellate Division: Second Judicial Department**

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Submitted - April 3, 2012

DANIEL D. ANGIOLILLO, J.P.  
PLUMMER E. LOTT  
SHERI S. ROMAN  
ROBERT J. MILLER, JJ.

2011-02001

DECISION & ORDER

In the Matter of Mega Sound & Light, LLC, appellant,  
v Commissioner of Labor, respondent.

(Index No. 1799/10)

Gerald Hecht, Pawling, N.Y., for appellant.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek  
and Laura R. Johnson of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of the Industrial Board of Appeals, dated April 21, 2010, as, after a hearing, modified an Order to Comply issued by the Commissioner of Labor of the State of New York, dated April 25, 2008, and directed the petitioner to pay certain unpaid commissions, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Putnam County (Nicolai, J.), dated August 13, 2010, which granted the motion of the Commissioner of Labor to dismiss the petition for failure to join a necessary party, and dismissed the proceeding.

ORDERED that the order and judgment is reversed, on the law, with costs, the motion to dismiss the petition for failure to join a necessary party is denied, the petition is reinstated, and the matter is remitted to the Supreme Court, Putnam County, for the joinder of the Industrial Board of Appeals as a respondent in this proceeding, without prejudice to its right to assert any defenses or affirmative defenses, for the service of the notice of petition and petition by the petitioner upon the Industrial Board of Appeals within 30 days after service upon the petitioner of a copy of this decision and order, for the service by the Industrial Board of Appeals of an answer or motion directed to the petition, and for further proceedings thereafter.

The Industrial Board of Appeals (hereinafter the IBA) is a necessary party to this

October 10, 2012

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proceeding (*see* CPLR 1001[a]; *Matter of Brucha Mortg. Bankers Corp. v Commissioner of Labor of State of New York*, 266 AD2d 211) subject to the jurisdiction of the court, and therefore, the Supreme Court should have “order[ed] [it] summoned,” rather than granting the motion of the Commissioner of Labor to dismiss the petition (CPLR 1001[b]; *see Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 726-727; *Matter of Lazzari v Town of Eastchester*, 62 AD3d 1002, 1002-1003, *lv granted* 17 NY3d 718; *Matter of Romeo v New York State Dept. of Educ.*, 41 AD3d 1102, 1105). Accordingly, we reverse the order and judgment and remit the matter to the Supreme Court, Putnam County, for further proceedings (*see Matter of Lazzari v Town of Eastchester*, 62 AD3d at 1003).

ANGIOLILLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court