

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

**ADMINISTRATOR,
WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT
OF LABOR,**

ARB CASE NO. 2024-0007

**ALJ CASE NO. 2018-TNE-00008
ALJ PAUL R. ALMANZA**

PROSECUTING PARTY,

DATE: February 14, 2024

v.

DEGGELLER ATTRACTIONS, INC.,

RESPONDENT.

**Before HARTHILL, Chief Administrative Appeals Judge and ROLFE,
Administrative Appeals Judge**

DECISION AND ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM:

This case arises under the H-2B provisions of the Immigration and Nationality Act (INA),¹ and its implementing regulations.² On August 6, 2019, an Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) finding Deggeller Attractions, Inc. (Respondent) violated the provisions of the INA based on Respondent's ETA Form 9142, Application for Temporary Employment Certification (9142 form) for the year 2013.³ Respondent appealed to the Administrative Review

¹ 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) and 1184(c)(14).

² 20 C.F.R. Part 655, Subpart A (2009).

³ *Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. Deggeller Attractions, Inc.*, ARB No. 2020-0004, ALJ No. 2018-TNE-00008, slip op. at 1-2 (ARB Jan. 25, 2022).

Board (Board).⁴ On January 25, 2022, the Board affirmed the D. & O. in part, vacated in part, and remanded the case for further proceedings.⁵ On October 30, 2023, an ALJ issued a D. & O. on Remand that modified and vacated, in part, the damages and reduced the civil money penalty.⁶

On November 29, 2023, Respondent appealed the ALJ's decision to the Board.⁷ On December 8, 2023, the Board issued the Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Schedule (Briefing Order). The Briefing Order required Respondent to file an opening brief within 28 calendar days of the date of the Briefing Order (on or by January 5, 2024). Respondent did not submit an opening brief as ordered.

Consequently, on January 23, 2024, the Board issued an Order to Show Cause ordering Respondent to explain why the Board should not dismiss the appeal for failing to timely file an opening brief.⁸ The Board cautioned Respondent that if the Board did not receive a response and opening brief within ten calendar days of the Board's order (on or before February 2, 2024), the Board may dismiss the appeal without further notice.⁹ Nevertheless, Respondent did not file a response or an opening brief as ordered.

The Board has the inherent power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.¹⁰ Pursuant to this authority, the Board may dismiss an appeal in a case in which the petitioner fails to adequately explain their failure to comply with the Board's orders, including the briefing schedule.¹¹

Respondent failed to file an opening brief as ordered by the Board. The Board then gave Respondent the opportunity to explain why Respondent failed to file an opening brief, and explicitly warned that failure to do so could result in dismissal of

⁴ *Id.* at 2.

⁵ *Id.* at 20.

⁶ D. & O. on Remand at 20.

⁷ Respondent's Petition for Review.

⁸ Order to Show Cause.

⁹ *Id.*

¹⁰ *Lewman v. Ken Brick Masonry Supply*, ARB No. 2007-0015, ALJ No. 2006-STA-00018, slip op. at 3 (ARB Oct. 31, 2007) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)).

¹¹ *Boch v. J.P. Morgan Secs.*, ARB No. 2022-0029, ALJ Nos. 2020-CFP-00002, 2020-SOX-00004, slip op. at 2 (ARB June 15, 2022) (citation omitted) (dismissing the appeal where the appealing party failed to respond to, and comply with, the Board's orders).

this appeal. Again, Respondent did not file a response. Given Respondent's failure to respond to, and comply with, the Board's orders, we **DISMISS** the appeal.¹²

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

¹² In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.