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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Marvin CENTENO, Respondent,
v.
ACADEMY GROUP PROPERTIES, LLC et al., Appellants,
and
UNINSURED EMPLOYERS' FUND, Respondent,
WORKERS' COMPENSATION BOARD, Respondent

April 8, 2021

Facts: Case was established against appellants as a compensable accident and that the employers were in violation of Section 50 of the Workers' Compensation Law by not having workers' compensation insurance in effect on the date of the accident. The uninsured employer filed an appeal objecting to the finding that they were not in compliance with Section 50. The appeal was denied by the Board as not being within the requirements of 12 NYCRR 300.13. No appeal was taken from this decision. Subsequently, the claim was resolved by a schedule loss of use stipulation between the claimant and the Uninsured Employer' Fund. The uninsured employer then filed an appeal from that decision. Board denied the application again based upon employers not complying with 12 NYCRR 300.13.

Holding: *Affirmed.*

Discussion: On appeal from the schedule loss of use decision employer's RB-89 failed to address question number 12 properly. The employer's argued that claimant was not an employee, which was a decision made at a previous hearing and from which employer's appeal was denied. Court found that Board did not abuse its discretion in refusing to relitigate issue of employer-employee relationship. The Court also found that the Board's decision that question number 15 on the RB-89 was lacking and the Board had discretion to deny application on that basis as well.