

Decided and Entered: December 13, 2012

514202

In the Matter of the Claim of
RUDY MANGROO,

Claimant,

v

PARAMOUNT BRANDS et al.,
Appellants,

and

EBER BROTHERS WINE & LIQUOR
CORPORATION et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFIRMED the Board's ruling that (1) SIF had to reimburse carrier for its proportion of award and (2) denied Full Board Review.

MEMORANDUM AND ORDER

Calendar Date: October 12, 2012

Before: Rose, J.P., Spain, Malone Jr., Garry and Egan Jr., JJ.

Michael Miliano, State Insurance Fund, New York City
(Charlotte Flynn of counsel), for appellants.

Stewart, Greenblatt, Manning & Baez, Syosset (Michael H.
Ruina of counsel), for Eber Brothers Wine & Liquor Corporation
and another, respondents.

Egan Jr., J.

Appeals (1) from a decision of the Workers' Compensation Board, filed June 7, 2011, which ruled, among other things, that the State Insurance Fund must reimburse One Beacon Insurance Company certain amounts, and (2) from a decision of said Board,

filed October 28, 2011, which denied the State Insurance Fund's request for reconsideration and/or full Board review.

Claimant, a warehouse worker, sustained three compensable injuries while working for the employer, two of which occurred while the State Insurance Fund (hereinafter SIF) was the employer's workers' compensation carrier and one of which occurred while One Beacon Insurance Company was the employer's workers' compensation carrier. In February 2008, a Workers' Compensation Law Judge (hereinafter WCLJ) ruled that claimant was permanently partially disabled and awarded benefits in the amount of \$50,730, with continuing payments at the rate of \$285 per week. The WCLJ also apportioned liability equally as to each of the three claims (\$16,910) and directed that the respective carriers reimburse each other according to their proportionate shares of the award.

SIF and One Beacon subsequently claimed that they each paid the entire sum due to claimant and, as a result, sought reimbursement from one another as to the asserted overpayment. Following various hearings, at which both carriers were given the opportunity to provide canceled checks or other documentation to establish the amount claimed to be due and owing, a WCLJ directed SIF to reimburse One Beacon \$33,820 ($\$16,910 \times 2$) for its proportionate share of the prior award. SIF appealed that decision to the Workers' Compensation Board, attaching additional documentation relative to the claimed overpayment, which the Board rejected as untimely. The Board affirmed the WCLJ's decision, and SIF's subsequent request for reconsideration and/or full Board review was denied, prompting these appeals.

Initially, inasmuch as SIF did not brief the denial of its application for reconsideration and/or full Board review, we deem its appeal in this regard to be abandoned (see Matter of Amacio v Tully Constr., 82 AD3d 1371, 1371 n [2011]). As to the merits, the record reflects that SIF was afforded ample opportunity to provide documentation of its purported overpayment, which it repeatedly failed to do – even after being expressly directed to do so by the Board in May 2010. Under these circumstances, we cannot say that the Board erred in either rejecting the belated documentation or directing SIF to reimburse One Beacon based upon

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the evidence that was timely submitted (see generally Matter of Wiess v Mittal, 96 AD3d 1175, 1177 [2012]; Matter of Curtis v Xerox, 66 AD3d 1106, 1108 [2009]). SIF's remaining contentions have been examined and found to be lacking in merit.

Rose, J.P., Spain, Malone Jr. and Garry, JJ., concur.

ORDERED that the decisions are affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court