

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X
 In the Matter of the Petition of: :
 :
 JAY NORDIN AND XTREME HOME DESIGN INC., :
 :
 Petitioners, :
 : DOCKET NO. PR 09-076
 To Review Under Section 101 of the Labor Law: An :
 Order to Comply with Article 6 of the Labor Law, dated : RESOLUTION OF DECISION
 January 23, 2009, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
 -----X

APPEARANCES

Peter J. Graham, Esq., for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for Respondent.

WHEREAS:

On April 7, 2009, each Petitioner filed with the Board a separate petition, postmarked April 2, 2009, alleging that the Order to Comply that the Respondent Commissioner of Labor (Respondent) issued against them was invalid or unreasonable. The single address listed by Petitioners in their petitions was identical to the address on the Order to Comply, which is also the address where the Order was served. The Board consolidated the petitions since they challenged the same Order, issued on January 23, 2009.

Because Labor Law § 101 (1) provides that a petition to review an order of the Commissioner of Labor “shall be filed with the board no later than sixty days after the issuance of . . . [the] order,” and the petitions in this matter were filed more than sixty days from the date the Order was issued, the Board wrote to the Petitioners on April 9, 2009, requesting a written explanation of why the Petitioners contended that their petitions were not untimely.

By letter dated April 29, 2009, the Petitioners enclosed an affidavit of Petitioner Jay Nordin stating that he did not receive the January 23, 2009 Order until March 28, 2009, when

he found the Order in the boiler room of his house. Nordin further explained that he was not living at the house at the time due to marital problems and threats of physical violence from his wife, but only visited in the afternoon each day and that during this period he lived in Port Jefferson and was emotionally distraught.

The Board served the petitions and the Petitioners' letter of April 29, 2009 on the Respondent on May 15, 2009. By motion dated June 17, 2009, the Respondent moved to dismiss the petitions as untimely and for failure to allege facts upon which the Board could find the Order unreasonable or invalid.

The Petitioners' response to the motion argues that the late filing of the petitions was excusable due to the fact that the dangerous situation at Petitioner Nordin's house resulted in it "not being his de facto address." In reply, Respondent argues that Petitioners were properly served at their last known address pursuant to Labor Law § 33 and that the sixty-day limitation period is prescribed by Labor Law § 101 and, pursuant to Board Rule 65.5 (12 NYCRR 65.5), "**Time periods prescribed by statute cannot be extended.**" [Emphasis in the original.]

In the past the Board has allowed petitions filed more than sixty days after issuance of an order where service of the order was improper or not reasonably calculated to notify a petitioner, but in this case Petitioners moved without filing a change of address with the Post Office and, in fact, listed the address where the Order was served as the current address in each of their petitions. Here, there is no issue of improper service or circumstances beyond the control of Petitioners. Because the petitions were filed late, the Board does not have jurisdiction over this matter and may not review the Petitioners' substantive allegations concerning the Order. Accordingly, the petitions must be dismissed as untimely.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

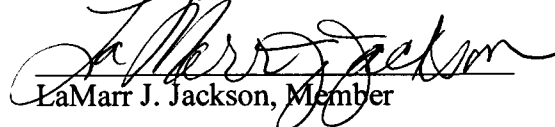
The petitions be, and the same hereby are, dismissed in accordance with the Board's Rules.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grunet, Member


LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
December 14, 2009.