

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 STEVEN SISSKIND AND ABRAHAM WIESEL :
 AND THE MORGAN MINT, INC. (T/A VOLPONE :
 STAMP CO., INC.), :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: :
 Orders to Comply with Articles 6 and 19 of the Labor :
 Law, issued February 9, 2009, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 09-125
RESOLUTION OF DECISION

WHEREAS:

1. On June 2, 2009 the Board received a letter in the above-referenced matter which was enclosed in an envelope postmarked May 28, 2009, and that did not include a copy of the Orders to be reviewed, requesting permission to file a late appeal.
2. By letter dated June 9, 2009, the Board, treating the letter of May 28, 2009 as a petition requested that the Petitioners file an amended petition that included a copy of the Orders to be reviewed.
3. On June 17, 2009, The Petitioners filed an amended petition with the Order to be reviewed attached. The amended petition was served on the Respondent on June 26, 2009.
4. The Respondent filed a motion to dismiss dated July 30, 2009, alleging that the amended petition must be dismissed as untimely.
5. By letter dated August 10, 2009, the Board required the Petitioners' response to the Respondent's motion, if any, to be received by September 10, 2009. To date, the Petitioner has filed no response nor requested additional time to file a response.¹

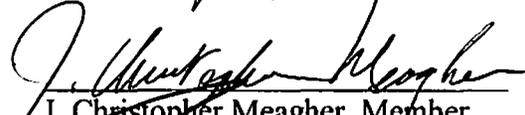
¹ On August 17, 2009, the Petitioners sent a fax to the Board requesting a copy of the motion and alleging that the Respondent had failed to serve the motion. A copy of the motion was faxed to them by the Board on August 21, 2009. We note that the Respondent's affidavit of service indicates that the motion was served on the Petitioners on July 30, 2009. In any event, the Petitioners did not request additional time to respond to the motion and had a copy of it by August 21, 2009 when it was faxed to them by the Board.

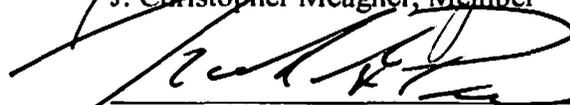
6. Labor Law § 101 provides that a petition for review must be filed with the Board no later than sixty days after the issuance of the Order to be reviewed. The Orders to be reviewed were issued on February 9, 2009. Therefore, the petition was untimely.
7. In its initial correspondence to the Board, the Petitioners requested that we accept their late petition as timely because they had sent a Freedom of Information Law (FOIL) request to the Department of Labor and were waiting for the response to the FOIL request before filing their petition. This does not excuse the Petitioners' late filing. Accordingly, the petition (and amended petition) must be dismissed as untimely.

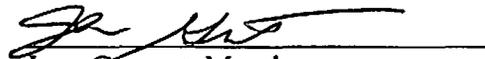
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

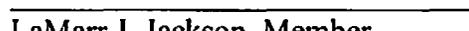
1. The Orders to Comply with Articles 6 and 19 of the Labor Law, dated February 9, 2009, are hereby affirmed; and
2. The petition is hereby dismissed.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grumet, Member

ABSENT

LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
October 21, 2009.