

**HENG ZHEN WU AND ZHOU FAN LIU AND 868
RESTAURANT CORP.**

Docket No. PR 09-136

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

HENG ZHEN WU AND ZHOU FAN LIU AND 868
RESTAURANT CORP.,

Petitioners,

DOCKET NO. PR 09-136

To Review Under Section 101 of the Labor Law:
Three Orders under Article 5, 6, and 19 of the Labor
Law, dated February 6, 2009,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Heng Zhen Wu, *pro se* Petitioner.

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

WHEREAS:

This proceeding was commenced when the Petitioner filed a petition with the
Industrial Board of Appeals (Board) on June 5, 2009, seeking review of three orders that
Respondent Commissioner of Labor (Commissioner) issued on February 6, 2009.

Labor Law § 101 (1) states that:

“Except where otherwise prescribed by law, any person in interest or his
duly authorized agent may petition the board for a review of the validity
or reasonableness of any . . . order made by the commissioner Such
petition shall be filed with the board no later than sixty days after the
issuance of such . . . order.”

The orders sought to be reviewed were issued on February 6, 2009, and therefore, a
petition for review would be timely if filed with the Board no later than April 7, 2009 (Board
Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was filed on June 5,
2009. The petition was therefore untimely.

By letter dated June 25, 2009 the Board requested a written explanation for the untimely petition, advising such explanation be supported by proof, including an affidavit by Petitioner or someone else with personal knowledge of the relevant facts. In response, the Board received a letter on July 3, 2009, from Petitioner's daughter, Mimi Wu.

Ms. Wu's letter did not provide an explanation for the untimely filing other than to assert that her father, Petitioner, did not speak English, that she and her sister were away at college and had been unable to assist their father in this matter, and that her father was under the impression that he did not have to file a petition because he paid his employees wages in full. Ms. Wu's letter was not supported by an affidavit by the Petitioner or someone else with knowledge of the relevant facts.

By letter dated July 6, 2009, the Board re-advised Ms. Wu to obtain an explanation in the form of an affidavit of the person or persons with personal knowledge of the facts. On July 3, 2009, the Board received two letters from Petitioner, one in Chinese and another in English. Neither version was notarized or accompanied by an affidavit from a translator. Moreover, the English version offers no explanation for the late filing other than to imply that the Petitioner, in an attempt to understand the orders, went to the Department of Labor and spoke to two unnamed Department of Labor employees, one of which who advised him that he had a "very small issue" and to "solve it on [his] own"; and that he subsequently had to gather funds from friends and relatives to pay his restaurant workers that initiated the orders. The fact that the Petitioner did not understand English or that Petitioner misunderstood the orders to comply and attempted to resolve the orders on his own, does not justify the Petitioners' failure to meet the filing deadline imposed by Labor Law § 101.

Moreover, the petition was served on Respondent on August 31, 2009 and the Commissioner moved on November 9, 2009 to dismiss the petition as untimely. The Petitioner, having failed to respond to the Commissioner's motion to dismiss, has offered no sufficient grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

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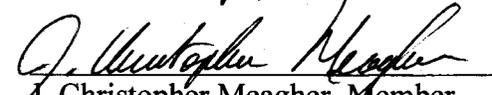
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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

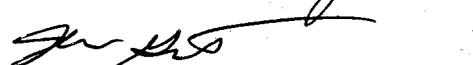
The Commissioner of Labor's motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.



Anne P. Stevason, Chairman



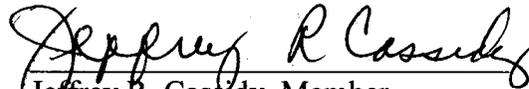
J. Christopher Meagher, Member



Jean Grumet, Member

Absent

LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
May 26, 2010.