

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
JOSEPH MIELE AND MIELE SANITATION CO.	:
NY, INC.,	:
	:
Petitioners,	:
	:
To Review Under Section 101 of the Labor Law: An	:
Order to Comply with Article 6 of the Labor Law,	:
dated February 2, 2009,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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DOCKET NO. PR 09-145

RESOLUTION OF DECISION

APPEARANCES

Joseph Miele, *pro se*.

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

WHEREAS:

On June 15, 2009, the Petitioners filed a petition with the Board alleging that an Order to Comply issued against them by the Respondent Commissioner of Labor was invalid or unreasonable. The Petitioners failed to attach a copy of the Order to their petition.

On June 23, 2009, the Petitioners faxed the Board a copy of the Order. The Order was issued on February 2, 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 petition in this matter was filed more than sixty days from the date the Order was issued, the Board wrote to the Petitioners on June 26, 2009, requesting a written explanation of why the Petitioners contended that their petition was not untimely.

The Petitioners, by letter dated July 13, 2009, enclosed copies of correspondence that the Petitioners had sent to the Department of Labor disputing that the claimant in this matter

was ever employed by the Petitioners and asserting that the Petitioners do not owe the wages alleged in the Order.

The Board served the petition and the Petitioners' letter of July 13, 2009 on the Respondent on July 27, 2009. By motion dated August 28, 2009, the Respondent moved to dismiss the petition as untimely. The Respondent argues that the petition was not timely filed and that the correspondence sent by the Petitioners to the Respondent contesting the Order was not a petition to the Board. We agree with the Respondent, particularly where the letters the Respondent sent to the Petitioners in response to their correspondence specifically instructed the Petitioners to file an appeal with the Board if they wished to challenge the Order. Each letter stated in bold, underlined language that "**if you are aggrieved, a review of the Order may be requested by filing a petition with the Industrial Board of Appeals, Empire State Plaza, Agency Building #2, 20th Floor, Albany, NY 12223 within sixty (60) days of the date of the Order**" (emphasis in original). Furthermore, we agree with the Respondent that these letters, sent on February 10, 2009 and February 25, 2009 respectively, were sent well before the sixty day statute of limitations for the Petitioners to file a petition had expired.

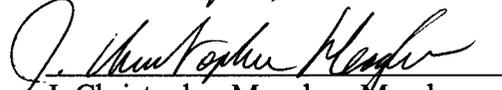
The Petitioners, in their response to the motion, repeat and re-allege that the claimant was not employed by them. While it may very well be the case that the claimant was not employed by the Petitioners, the Petitioners have failed to offer any valid excuse for not filing their petition within the sixty day statute of limitations, particularly where the Respondent advised them twice in writing in unambiguous terms that to challenge the Order they must file an appeal with the Board within sixty days of the date the Order was issued. Additionally, the Respondent's letters to the Petitioners explained how to file an appeal. Because the petition was filed late, the Board does not have jurisdiction over this matter and may not review the Petitioners' substantive allegations concerning the Order. Accordingly, the petition must be dismissed as untimely.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

This proceeding be, and the same hereby is, dismissed in accordance with the Board's Rules.



Anne P. Stevason, Chairman



J. Christopher Meagher, Member



Mark G. Pearce, Member



Jean Grumet, Member



LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
November 17, 2009.