

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 KATHERINE O'BRIEN, CHRIS HACK, JOSEPH :
 GRAYDON AND THE SPINNING ROOM BAR & :
 LOUNGE, LLC, :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order to Comply with Article 6 and An Order under :
 Article 19 of the Labor Law, both dated February 5, :
 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 10-116

RESOLUTION OF DECISION

APPEARANCES

Katherine O'Brien, *pro se* for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin T. Garry of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on April 13, 2010 in an envelope post-marked April 12, 2010. The petitioners filed an amended petition on May 7, 2010.

The petition and amended petition were served on Respondent Commissioner of Labor (Commissioner) on August 30, 2010. The Commissioner moved on October 6, 2010 to dismiss the petition as untimely.


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.”

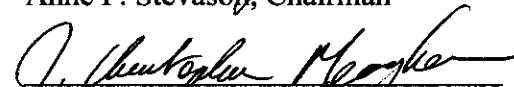
The orders sought to be reviewed were issued on February 5, 2010, and therefore, any petition for review filed with the Board after April 6, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until April 13, 2010 in an envelope post-marked April 12, 2010, it was untimely. Having failed to respond to the Commissioner’s motion to dismiss, the Petitioner has offered no grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

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

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
February 7, 2011.

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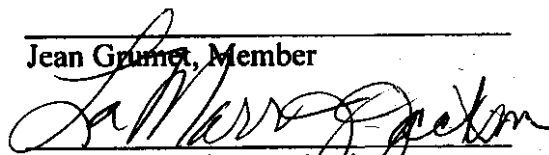
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