

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
BARON ASSOCIATES,	:
	:
Petitioner,	:
	:
To Review Under Section 101 of the Labor Law:	:
An Order to Comply with Article 6, and an Order :	DOCKET NO. PR 16-044
Under Article 19 of the Labor Law, both dated :	<u>RESOLUTION OF DECISION</u>
December 15, 2014,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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APPEARANCES

Law Office of Richard Weiss, New Rochelle (*Richard Weiss* of counsel), for petitioner.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Benjamin T. Garry* of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on April 21, 2016, and amended on May 24, 2016. On June 2, 2016, the Board served the amended petition on respondent Commissioner of Labor. Respondent moved on July 5, 2016 to dismiss the petition because it was filed more than 60 days after the orders being appealed were issued. There is no dispute that the petition was filed more than 60 days after the orders were issued, but on August 4, 2016, petitioner responded in opposition arguing that the petition should be deemed timely due to defective service of process. On August 16, 2016, respondent replied.

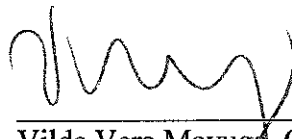
Labor Law § 101 (1) provides that a petition for review of orders issued by the Commissioner must be filed within 60 days of the date the orders were issued. Under Labor Law § 33, respondent is permitted to serve orders by mail at a petitioner’s last known place of business so long as the mailing is reasonably calculated to give notice (*Matter of Gambino et al.*, PR 10-150, at 3 n1 [Nov. 18, 2010]). Petitioner admits that petitioner “owned or managed” property at “374/376 McLean Ave., Yonkers, NY.” Petitioner argues that it never received the orders and only became aware of the judgment against it by a letter from respondent dated January 26, 2016, which had been “improperly addressed to ‘Baron LLC,’” and therefore service was ineffective. We disagree.

Service on petitioner was proper because respondent served the orders by mail at petitioner's last known place of business. In her response, respondent provided an affidavit of service showing that the orders were served by mail on "Baron Associates LLC" at 374/376 McLean Ave., Yonkers, New York, 10705. As stated above, petitioner admitted that petitioner "owned or managed" property at "374/376 McLean Ave., Yonkers, NY." We note that after a November 22, 2016, case-management conference, the Board directed the parties to submit supplemental briefing on the sole question of whether service at 374/376 McLean Ave. was ineffective. After petitioner sought an extension of time to file supplementary briefing, which the Board granted, petitioner failed to do so.


Petitioner's contention that it did not receive notice is unavailing. In its response, respondent states that the copies of the orders mailed to this address by regular mail were not returned. Once respondent produced the affidavits of service, a statement of non-receipt alone is insufficient to overcome the presumption of proper mail service and due receipt (*Matter of Vadillo*, 15-367 at 1 [May 25, 2016]; *Matter of Astor*, PR 08-056 at 2 [March 24, 2010]). Petitioner has not established that the address to which the orders were served was not its place of business or that mailing the orders to such address was not reasonably calculated to give notice. Respondent properly served petitioner pursuant to Labor Law § 33. Because the petition was filed late, the Board does not have jurisdiction over this matter, and the petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner's motion to dismiss the petition for review is granted, and the petition is dismissed.



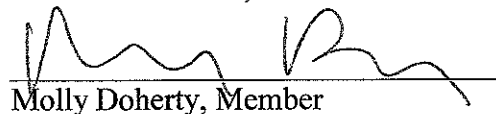
Vilda Vera Mayuga, Chairperson



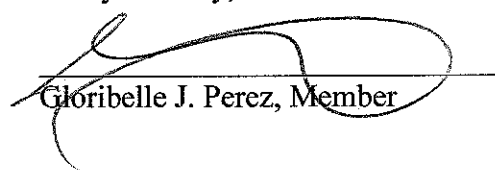
J. Christopher Meagher, Member



Michael A. Arcuri, Member



Molly Doherty, Member



Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York
on March 1, 2017.