

At the case-management conference petitioners acknowledged that petitioner Terraferma owns the building located at 2136 Jericho Turnpike, New Hyde Park, New York, 11040. To support their contention that petitioners did not receive proper notice, petitioners submitted a leasing agreement between petitioner Terraferma and leaseholder Otaka Sushi Inc., for a term from December 1, 2012, to November 30, 2017, for the purpose of establishing an “Chinese/Japanese fushion [sic] restaurant” at 2136 Jericho Turnpike. That petitioner Terraferma may have leased all or some portion of the property to a separate entity does not preclude petitioners from conduction business from the same address. Furthermore, petitioners admitted at the November 15, 2016, case-management conference that petitioner Blue Chip Fish & Clam Co. continues to do business out of 2136 Jericho Turnpike.

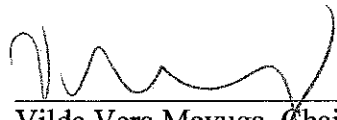
Service was proper. Appended to her reply, respondent provided affidavits of service stating that petitioner Terraferma and petitioner Blue Chip Fish & Clam Co. Inc. were each served by regular mail on August 13, 2014 at 2136 Jericho Turnpike, New Hyde Park, New York, 11040. Respondent represented that neither mailing was returned undeliverable. Once respondent produced the affidavits of service by the individual who did the mailing, petitioners’ statement of non-receipt 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]). Petitioners do not dispute the facial validity of respondent’s affidavits of service. We therefore find that respondent properly served petitioners pursuant to Labor Law § 33, and, accordingly, the statute of limitations has run.

Petitioners have not established that the address to which the orders were served was not their place of business or that mailing the orders to that address was not reasonably calculated to give notice. Because the petition was filed late and service was proper, the Board lacks jurisdiction over this matter and the petition for review must be dismissed.

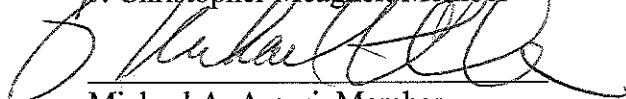
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

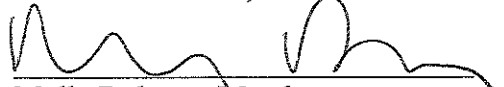
The Commissioner’s motion to dismiss the petition for review is granted, and the petition is dismissed.

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


Vilda Vera Mayuga, Chairperson


J. Christopher Meagher, Member


Michael A. Arcuri, Member


Molly Doherty, Member


Gloribelle J. Perez, Member