

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :  
 :  
MICHAEL MANGIONE D/B/A ALLSTATE :  
PAINTING, :  
 :  
 :  
Petitioner, :  
 :  
DOCKET NO. PR 16-107  
To Review Under Section 101 of the Labor Law: :  
An Order to Comply with Article 19, and an Order : RESOLUTION OF DECISION  
Under Articles 6 and 19 of the Labor Law, both dated :  
July 8, 2016, :  
 :  
 :  
- against - :  
 :  
 :  
THE COMMISSIONER OF LABOR, :  
 :  
 :  
Respondent. :  
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**APPEARANCES**

*Michael Mangione*, petitioner pro se.

*Pico Ben-Amotz*, General Counsel, NYS Department of Labor, Albany (*Kathleen Dix* of counsel),  
for respondent.

**WHEREAS:**

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on September 9, 2016, in an envelope postmarked September 7, 2016. On September 21, 2016, the Board served the petition on respondent Commissioner of Labor. Respondent moved on October 20, 2016, to dismiss the petition because it was filed more than 60 days after the orders being appealed were issued. Petitioner did not reply. There is no dispute that the petition was filed more than 60 days after the orders were issued, but in his petition, petitioner contends that he received the orders at the wrong address. Petitioner did not respond to the motion.

At issue is whether respondent provided proper notice under Labor Law § 33. 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*, PR 10-150, at 3 n1 [Nov. 18, 2010]).


Service was proper. In her response, respondent provided a September 4, 2002, Certificate of Individual Doing Business Under Assumed Name signed by Michael J. Mangione stating that

the undersigned was doing business as Allstate Painting at the address used by respondent for service, as evidenced by respondent's affidavit of service. While the petition states that petitioner's office is located at a different address, he did not rebut respondent's affidavit of service. We therefore find that respondent properly served petitioner pursuant to Labor Law § 33, and, accordingly, the statute of limitations has run.

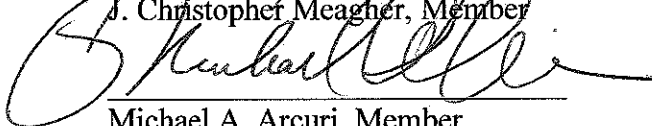
Because the petition was filed late and service was proper, the Board does not have jurisdiction over this matter, and the petition must be dismissed.

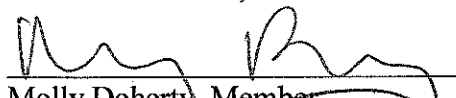
**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

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

  
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Vilda Vera Mayuga, Chairperson

  
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J. Christopher Meagher, Member

  
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Michael A. Arcuri, Member

  
\_\_\_\_\_  
Molly Doherty, Member

  
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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.