

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

LASZLO KESZTHELYI AND IGOR
CONSTRUCTION CORP.,

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, dated November 23,
2007,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 08-134

RESOLUTION OF DECISION

APPEARANCES

Ernest Gelman, Esq., for Petitioner.

Maria L. Colavito, Counsel to the Department of Labor, Mary E. McManus of Counsel, for
Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when Petitioners filed a petition with the Industrial Board of Appeals (Board) on August 21, 2008, seeking review of two orders that Respondent Commissioner of Labor (Commissioner) issued on November 23, 2007. By letter of September 3, 2008, the Board asked Petitioners to file an affidavit in support of their contention that the petition was not untimely filed.

In response, Petitioners filed an affidavit that, in relevant part, states that beginning in August 2007, their secretary worked one day a week and sometimes only twice a month; Petitioner Lazlo Keszthelyi's ability to read and write in English is relatively poor; and Petitioner Keszthelyi was out of the country much of the time during the appeal period. Accompanying the affidavit is a letter from Petitioners' attorney, who only then first appeared in this proceeding. The unsworn letter addresses the merits of the underlying orders and supports the truthfulness of Petitioner Keszthelyi and the claim that his English is weak.

The petition and the subsequent papers filed on behalf of Petitioners were served on Respondent on October 6, 2008. In response, on November 6, 2008, the Commissioner moved to dismiss the petition as untimely. Petitioners did not respond to the motion.

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.”

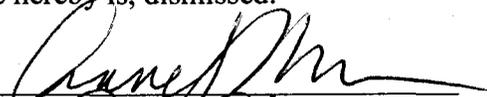
The orders sought to be reviewed were issued on November 23, 2007, and therefore, a petition for review would be timely if filed with the Board no later than January 22, 2008 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was postmarked August 21, 2008.

The reasons that Petitioners offer to support their contention that the petition is not untimely do not, as a matter of law, establish an excuse for their failure to file a petition by January 22, 2008. See *Matter of the Petition of Mt. Kisco Design Center and/or Roberta J. Picarillo*, Docket No. PR 06-095 (August 22, 2007).

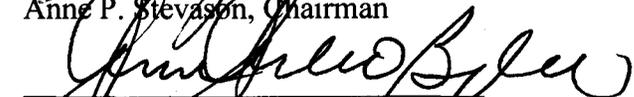
For all of these reasons, we find that the petition is untimely.

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.



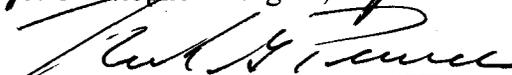
Anne P. Stevason, Chairman



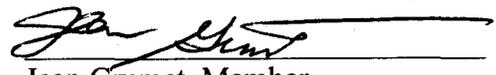
Susan Sullivan-Bisceglia, Member



J. Christopher Meagher, Member



Mark G. Pearce, Member



Jean Grumet, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 25, 2009.