

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

CITY OF NEW YORK ADMINISTRATION FOR :
CHILDREN'S SERVICES, :

Petitioner, :

DOCKET NO. PES 10-019

To Review Under Section 101 of the Labor Law: :
Three Notifications of Failure to Abate Violation and :
Orders to Comply dated October 28, 2010, and Three :
Notices to Comply with Section 27-a of the New :
York State Labor Law dated October 13, 2010 and :
October 28, 2010; :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Russell Steinberg, Senior Counsel, for Petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Jeffrey G. Shapiro of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on December 31, 2010 in an envelope postmarked December 30, 2010. The petition was served on the respondent Commissioner of Labor (Commissioner) on January 6, 2011. The Commissioner moved on February 11, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the various orders were issued. The petitioners did not respond to the motion although we advised them in a letter dated March 21, 2011 that their response to the motion was to be filed on or before April 18, 2011.

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 October 28, 2010, October 13, 2010 and October 18, 2010, and therefore, any petition for review filed with the Board after December 27, December 13 and December 17, 2010, respectively, 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 mailed to the Board until December 30, 2010, according to the post-mark on the envelope in which it was sent, it was untimely (Board Rules 65.5 [d]; 12 NYCRR 65.5 [d]). 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, Chairperson



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
July 26, 2011.

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."

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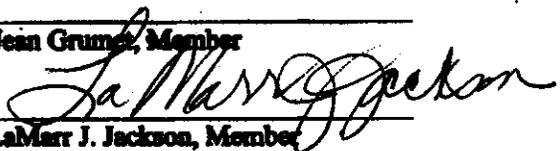
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Anne P. Stevason, Chairperson

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 Rochester, New York, on
July 26, 2011.

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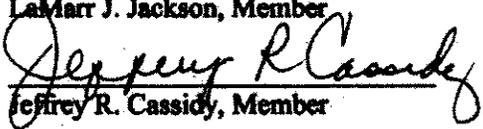
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Anne P. Stevason, Chairperson

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 Albany, New York, on
July 26, 2011.