

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

BADRUL CHOWDHURY, :

Petitioner, :

To Review Under Section 101 of the New York Labor :
Law a Determination made under Article 2 of the :
Labor Law, dated October 20, 2016, :

DOCKET NO. PES 16-014

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :

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APPEARANCES

Badrul Chowdhury, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Steven J. Pepe* of counsel),
for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on October 31, 2016, and amended on November 28, 2016.¹ The petition in this matter was served on respondent by the Board on December 9, 2016. By letter dated January 5, 2017, respondent sought, and we granted, a 60-day extension of time to file a responsive pleading. Under the extension, a timely response to the petition should have been filed on or before March 10, 2017. On March 13, 2017, respondent filed a motion to file a late answer.² Petitioner opposed respondent's motion.

Under Board Rules (12 NYCRR) § 65.5 (g), “[r]equests for extensions of time for filing . . . must be received in advance of the date on which the pleading . . . is due.” The Board has discretion to deem respondent’s failure to file a timely response as a waiver of her right to further participation in this proceeding (Board Rules [12 NYCRR] § 65.14). While respondent offered as justification a failure in respondent’s computer network and counsel’s failure to duly communicate

¹ By letter dated October 20, 2016, respondent Commissioner of Labor determined that she was unable to pursue Chowdhury’s complaint because Chowdhury failed to file within the 30-day statute of limitations imposed by Labor Law § 27-a.

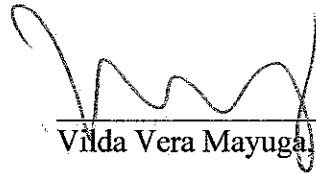
² We note that respondent attached to the instant motion her answer to the petition under review.

with office staff, we find that law office failure is insufficient grounds to show good cause (*see e.g., Galanos v New York*, 35 AD2d 829, 830 [2nd Dept 1970] ["The law office failure of the attorney is an inadequate excuse."]; *Matter of Econopouly*, PR 13-180 [January 20, 2016] [petition granted where law office failure did not excuse respondent's late filing of pleading]). Accordingly, we deny respondent's motion and reject the answer as filed. Under Board Rules (12 NYCRR) § 65.14, we deem respondent's failure to file a timely response a waiver of her right to further participation in this proceeding.

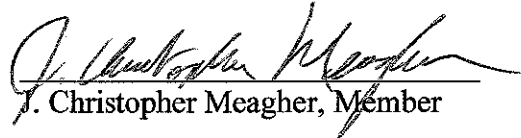
As respondent has failed to deny any of the allegations in the petition, we find the factual allegations admitted for the purposes of the instant review. Under the facts as we find them, petitioner appears to allege in the petition that he timely filed his complaint of discrimination with respondent. We therefore grant the petition.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Commissioner's motion to file a late answer is denied; and
2. The petition for review is granted.



Vilda Vera Mayuga, Chairperson

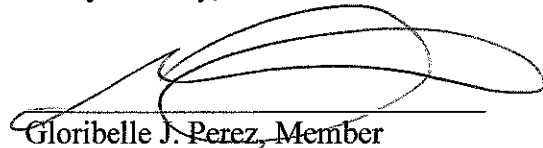


J. Christopher Meagher, Member

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 June 14, 2017.

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J. Christopher Mezapher, Member



Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York,
on June 14, 2017.