

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 ANTONIO J. DEFRANCO, :
 :
 Petitioner, :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order to Comply With Article 6 of the Labor Law :
 and an Order Under Article 19 of the Labor Law, all :
 dated June 26, 2009, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
 -----X

DOCKET NO. PR 09-242

RESOLUTION OF DECISION

APPEARANCES

Antonio J. DeFranco, *pro se* Petitioner.
 Maria L. Colavito, Counsel, New York State Department of Labor, Larissa C. Wasyl of
 Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the Petitioners filed a petition with the Industrial Board of Appeals (Board) on August 31, 2009 in an envelope post-marked August 26, 2009 seeking review of three orders that Respondent Commissioner of Labor (Commissioner) issued on June 26, 2009.

The petition was served on the Commissioner on September 14, 2009. The Commissioner moved on May 7, 2010 to dismiss the petition as untimely. The motion was first filed on September 24, 2009 but could not be served until May 2010. The Petitioner 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.”

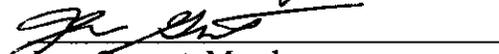
The orders sought to be reviewed were issued on June 26, 2009, and therefore, any petition for review filed with the Board after August 25, 2009 would be untimely (Board Rules 65.5 and 65.3 [a] [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until August 31, 2009 in an envelope post-marked August 26, 2009, it was untimely, and the Petitioners, having failed to respond to the Commissioner’s motion to dismiss, have 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, Chairman


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
October 20, 2010.

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