

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

J. CHRISTOPHER DALY AND SHELDRAKE :  
ORGANIZATION, INC., :  
: Petitioners, :  
: :  
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, :  
both dated November 24, 2009, :  
: - against - :  
: THE COMMISSIONER OF LABOR, :  
: Respondent. :  
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DOCKET NO. PR 10-051

RESOLUTION OF DECISION

APPEARANCES

J. Christopher Daly, *pro se*, for Petitioners.

Maria L. Colavito, Counsel to the 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 February 22, 2010 in an envelope post-marked February 15, 2010 seeking review of two orders that Respondent Commissioner of Labor (Commissioner) issued on November 24, 2009.

The petition was served on the Commissioner on April 22, 2010. The Commissioner moved on May 12, 2010 to dismiss the petition as untimely. The Petitioners did not respond to the motion.

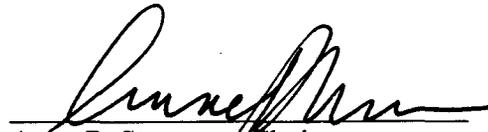
Labor Law § 101 (1) states that:

“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 24, 2009, and therefore, any petition for review filed with the Board after January 25, 2010 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 February 22, 2010 in an envelope post-marked February 15, 2010, 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.<sup>1</sup> 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.

  
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Anne P. Stevason, Chairman

  
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J. Christopher Meagher, Member

  
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Jean Grumet, Member

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LaMarr J. Jackson, Member

Absent  
\_\_\_\_\_  
Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
July 28, 2010.

<sup>1</sup> It appears that a letter dated February 8, 2010 was sent by the Petitioners to DOL seeking advice on how to appeal the orders. We note that even if such letter were to be construed as a Petition, it was nevertheless untimely.

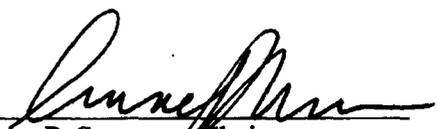
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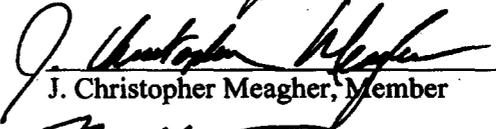
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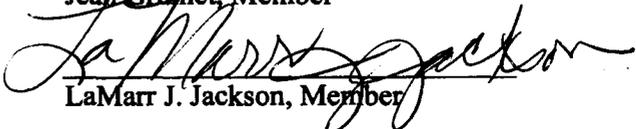
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