

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

BRADLEY A. RADWANER and BRADLEY
ARDEN RADWANER, M.D., P.C., :

Petitioners, :

DOCKET NO. PR 10-291

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, each :
dated July 16, 2010, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Law Office of Michael L. Ferch, Michael L. Ferch of Counsel, for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on September 20, 2010 in an envelope post-marked September 17, 2010, which was served on the respondent Commissioner of Labor (Commissioner) on October 7, 2010. The Commissioner moved on November 9, 2010 to dismiss the petition as untimely.

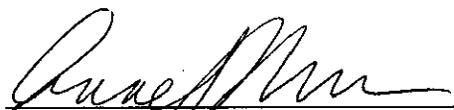
Labor Law § 101 (1) states that:

“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 July 16, 2010, and therefore, any petition for review mailed to the Board after September 14, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 (d) (12 NYCRR 65.5 [d])). As the petition in this proceeding was not mailed to the Board until September 17, 2010, it is untimely. The petitioners allege that they contacted the respondent on or about September 14, 2010, and were led to believe that since they were in settlement negotiations, it might be possible for the respondent to extend the period of time for a petition to be filed with the Board, but that the petitioners should file a petition "as soon as possible." The respondent submitted an affidavit of one of her employees stating that the conversation in question took place on September 13, 2010 and that the petitioner's attorney was informed that no extension to file an appeal could be granted and that he should immediately file his petition. We credit the respondent's affidavit which was based on personal recollection and contemporaneous notes, and which, in any event, does not contradict the petitioner's attorney's statement that he was informed he should file a petition "as soon as possible." Indeed, had the petitioner followed the respondent's employee's advice and immediately mailed a petition to the Board on September 13, 2010, such petition would have been timely filed. However, since the petition was not mailed until September 17, 2010, the Board does not have jurisdiction over this matter and 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. Stevenson, Chairman



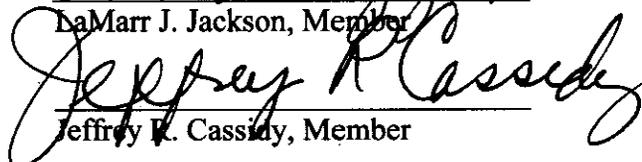
J. Christopher Meagher, Member



Jean Grumet, Member



LaMarr J. Jackson, Member



Jeffrey K. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 27, 2011.