

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
TIMOTHY SORENSON (T/A OCEAN	:
CONTRACTING/DUMPSTERS 4 LESS),	:
	:
Petitioner,	:
	:
To Review Under Section 101 of the Labor Law: An	:
Order to Comply With Article 6 of the Labor Law	:
dated September 10, 2010,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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DOCKET NO. PR 10-372

RESOLUTION OF DECISION

APPEARANCES

Timothy Sorenson, petitioner pro se.

Pico Ben-Amotz, Acting 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 November 29, 2010. The petition was served on the respondent Commissioner of Labor (Commissioner) on December 22, 2010. The Commissioner moved on January 25, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued. The petitioner did not respond to the motion, although he was advised by letter dated February 4, 2011, that his response must be filed by March 7, 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.”

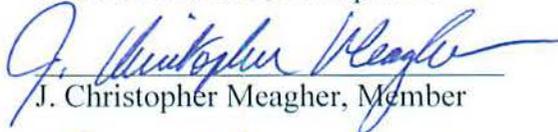
The order sought to be reviewed was issued on September 10, 2010, and therefore, any petition for review filed with the Board after November 9, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until November 29, 2010, it was untimely. The petitioner, having failed to respond to the motion, has provided no explanation to excuse the late 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



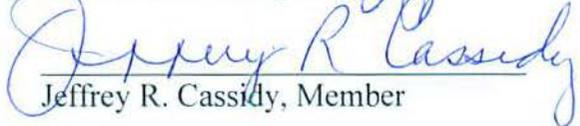
J. Christopher Meagher, Member



Jean Grumet, Member



LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
October 11, 2011.