

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 JACK ABRAHAM AND NORA ABRAHAM, :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order to Comply with Article 19 of the Labor Law :
 and an Order Under Article 19 of the Labor Law, :
 both dated December 3, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
 -----X

DOCKET NO. PR 11-031
RESOLUTION OF DECISION

APPEARANCES

Law Offices of Ginsberg & Katsorhis, P.C., Kerry John Katsorhis of Counsel, for
Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Bates of Counsel, for
Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on February 9, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on February 28, 2011. The Commissioner moved on March 17, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the orders were issued. The petitioners opposed the motion on the ground that the motion was allegedly not timely filed. However, not only was the motion timely filed (*see e.g. Matter of Anthony Villani et al.*, PR 09-198 [June 23, 2010] [five additional days for mailing allowed when measuring time in which motion may be filed]), but even if it were not, that is not a defense to an untimely petition.

Labor Law § 101 (1) states that:

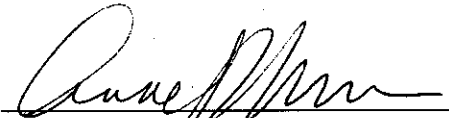
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the

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 December 3, 2010, and therefore, any petition for review filed with the Board after February 1, 2011 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 February 9, 2011, it was untimely. 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 New York, New York, on
July 26, 2011.

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LaMarr J. Jackson, Member

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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
July 26, 2011.