

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

SIN-TUNG CHAN AND WAN XING LONG INC.,

Petitioners,

To Review Under Section 101 of the Labor Law:  
An Order to Comply with Article 19 and an Order  
Under Articles 6 and 19 of the Labor Law, both dated  
January 10, 2014,

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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DOCKET NO. PR 14-072

INTERIM  
RESOLUTION OF DECISION

**APPEARANCES**

Xue and Associates, P.C. (Robert L. Isabella of counsel), for the petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Larissa C. Bates of counsel), for the respondent.

**WHEREAS:**

The above proceeding was commenced on April 4, 2014, when the Board received a petition to review orders issued by the respondent against Kenny Deng Feng Chan<sup>1</sup>, and petitioners Sin-Tung Chan and Wan Xing Long Inc. (T/A Maple Supermarket) on January 10, 2014. The respondent moved on May 30, 2014 to dismiss the petition as untimely since it was filed more than 60 days after the orders were issued (*see* Labor Law § 101 [1]). There is no dispute that the petition was filed more than 60 days after the orders were issued, but the petitioners contend that service was defective and therefore the petition must be accepted as timely.

Labor Law § 101 (1) provides that a petition for review of orders issued by the respondent Commissioner of Labor must be filed within 60 days of the date the orders were issued. The affidavit of service provided by the respondent indicates that the orders were mailed to Sin-Tung Chan at a residential address in Flushing, New York, and also sent to him and the corporate petitioner at Maple Supermarket in Flushing, New York. With respect to service on


<sup>1</sup> Kenny Deng Feng Chan filed a separate petition which has been assigned docket number PR 14-085 by the Board.

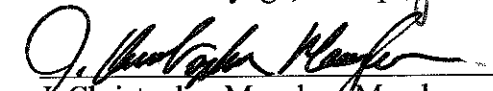
the individual petitioner at a residential address, such service was defective. We have repeatedly held that serving orders on an individual by mail to a residence is not permitted by Labor Law § 33 (see e.g. *Matter of Angelo A. Gambino et al.*, PR 10-150 [interim decision, November 18, 2010]). However, under Labor Law § 33, the respondent is permitted to serve orders by mail to individuals at their last known place of business so long as the mailing is reasonably calculated to give notice (*Gambino, supra*). Petitioners argue that Maple Supermarket could not have been the petitioners' last known place of business, because it closed in 2009, prior to issuance of the orders, as shown by New York Department of State records attached to the petition.


We agree that service on the petitioners by mail at the Maple Supermarket address was not proper service because it was not reasonably calculated to give notice of the orders to the petitioners (*Bossuk v Steinberg*, 58 NY2d 916, 919 [1983]; *Fashion Page, Ltd. v Zurich Ins. Co.*, 50 NY2d 265, 272 [1980]; *Gambino, supra*; see also *Matter of Kenny Deng Feng Chan*, PR 14-085 [interim decision] [August 7, 2014]). A simple search of the Department of State's online database would have shown that the corporation trading as Maple Supermarket was dissolved in 2009, and that orders sent to the petitioners there almost five years later would therefore be unlikely to reach their intended recipients. In the absence of proper service of the orders on the petitioners, the limitations period did not begin to run, and the petition is deemed timely filed with the Board. We find that the petition is timely and the Board's review proceedings have been commenced.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

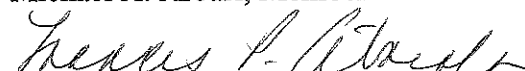
1. Respondent Commissioner of Labor's motion to dismiss the petition be, and hereby is, denied; and
2. Respondent Commissioner of Labor be, and hereby is, required to answer the petition within 35 days of service of this Interim Resolution of Decision upon him.

  
Vilda Vera Mayuga, Chairperson

  
J. Christopher Meagher, Member

  
LaMarr J. Jackson, Member

  
Michael A. Arcuri, Member

  
Frances P. Abriola, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
September 24, 2014.