

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:	
	:	
DIMITRI A. GRIVAS AND ARMA	:	
INTERNATIONAL, LLC,	:	
	:	
Petitioners,	:	
	:	DOCKET NO. PR 14-214
To Review Under Section 101 of the Labor Law:	:	
An Order to Comply with Article 19 and an Order	:	<u>RESOLUTION OF DECISION</u>
Under Article 6 and 19 of the Labor Law, both dated	:	
July 14, 2014,	:	
	:	
- against -	:	
	:	
THE COMMISSIONER OF LABOR,	:	
	:	
Respondent.	:	

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APPEARANCES

Whiteman Osterman & Hanna LLP, (Robert T. Schofield of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on September 17, 2014. The petition was served on the respondent Commissioner of Labor (Commissioner) on October 3, 2014. The Commissioner moved to dismiss the petition as untimely on November 5, 2014, because it was filed more than 60 days after the order was issued.

Labor Law § 101 (1) states that:

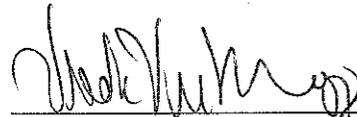
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on July 14, 2014, and therefore, any petition for review filed with the Board after September 12, 2014, 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 September 17, 2014, in an envelope post-marked September 15, 2014, it was untimely.

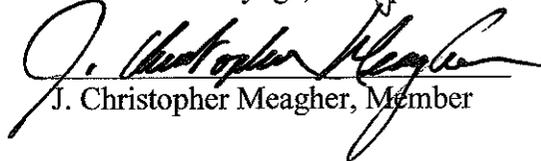
The petitioners filed an opposition to the motion that was received by the Board on December 4, 2014, and respondent filed a reply to the opposition on December 18, 2014. The petitioners' opposition claims that their petition was filed on the last possible day, namely, September 15, 2014, due to being in settlement discussions with the respondent and claiming to have been told that filing an appeal "may limit the ability of the Commissioner to adjust his position for purposes of settlement." That is not a legally sufficient reason for failing to file an appeal and in any event, the petitioners miscalculated the time by which a petition needed to be filed to be timely. The orders were dated July 14, 2014. The calculation of the 60 days starts on July 15th and ends on Friday, September 12, 2014. For this petition to be timely, it would have had to be post-marked or received by September 12, 2014.

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.



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
January 28, 2015.

The orders sought to be reviewed were issued on July 14, 2014, and therefore, any petition for review filed with the Board after September 12, 2014, 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 September 17, 2014, in an envelope post-marked September 15, 2014, it was untimely.

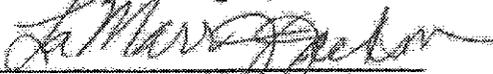
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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Frances P. Abriola, Member

Dated and signed by a Member
of the Industrial Board of Appeal
at Rochester, New York, On
January 28, 2015

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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 Albany, New York, on
January 28, 2015.

The orders sought to be reviewed were issued on July 14, 2014, and therefore, any petition for review filed with the Board after September 12, 2014, 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 September 17, 2014, in an envelope post-marked September 15, 2014, it was untimely.

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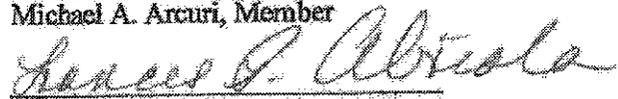
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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member



Frances P. Abriola, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York, on
January 28, 2015.