

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
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ABRAHAM B. GREENFIELD AND AHAVA :
MEDICAL & REHABILITATION CENTER, LLC, :
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Petitioners, :
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To Review Under Section 101 of the Labor Law: :
An Order To Comply With Article 19 of the Labor :
Law, and an Order Under Articles 5, 6 and 19 of the :
Labor Law, each dated February 17, 2015, :
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- against - :
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 :
THE COMMISSIONER OF LABOR, :
 :
 :
Respondent. :
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DOCKET NO. PR 15-142
RESOLUTION OF DECISION

APPEARANCES

Kinzler Law Group, PLLC (Ben Kinzler of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Jake A. Ebers of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on May 4, 2015 in an envelope postmarked April 29, 2015. The Board served the petition on respondent Commissioner of Labor on May 12, 2015. Respondent moved on May 20, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners replied, in relevant part, that service was improper.

Labor Law § 101 (1) provides 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 February 17, 2015; therefore, any petition for review filed with the Board with a post-mark after April 20, 2015 is untimely (*id.*; Board Rule of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)] and 65.3 [a] [12 NYCRR 65.3 (a)] [if last day of the period falls on a legal holiday, Saturday, or Sunday the period runs until the end of the next day that is not a legal holiday, Saturday, or Sunday]) and must be dismissed. Petitioners do not dispute that the petition was filed after April 20, 2015, noting that it was filed “a mere few weeks past the sixty day statute of limitations.” Rather, they argue that the Board should grant an exception for the petition’s “untimeliness” because Greenfield was not properly served, as his “last known address is not and had never been 2555 Nostrand Ave, Brooklyn, NY 11210, the only address to which the subject orders were mailed.” This argument is unavailing. The petitions were served by mail on petitioners at:

2555 Nostrand Avenue
Brooklyn, NY 11210

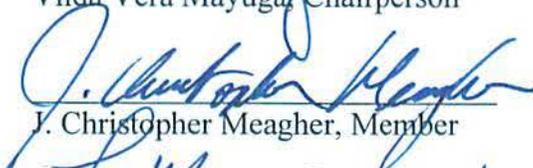
In accordance with Labor Law § 33, which sets out, in relevant part, that “notice may be given by mailing it in a letter addressed to such person at his last known place of business,” this address is proper for service. By Greenfield’s own admission in the petition, Greenfield confirmed this very address as the mailing address for each petitioner.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor’s motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.



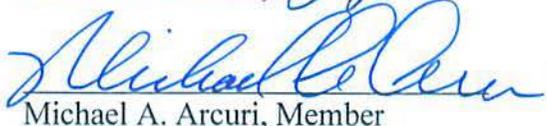
Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York
on December 9, 2015.