

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
ROBERT J. GREENMAN AND BOB'S :
COLLISION & CUSTOMS, :
 :
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 March 10, 2015, :
 :
- against - :
 :
THE COMMISSIONER OF LABOR, :
 :
Respondent. :
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DOCKET NO. PR 15-152
RESOLUTION OF DECISION

APPEARANCES

Robert J. Greenman, petitioner pro se.

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

WHEREAS:

This proceeding was commenced when petitioner Robert J. Greenman filed a petition with the Industrial Board of Appeals (Board) on May 14, 2015 in an envelope postmarked May 12, 2015. The Board served the petition on respondent Commissioner of Labor on June 23, 2015. Respondent moved on June 30, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners did not reply to the motion.

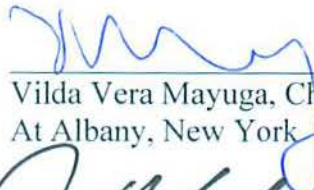
Labor Law § 101 (1) provides that:

“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.”

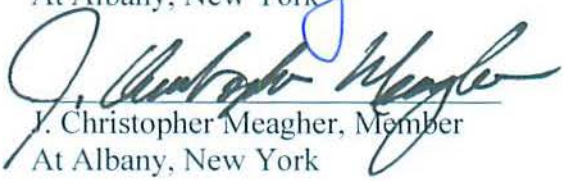
5. By notice and letter issued on July 29, 2015, the Board rescheduled the hearing to September 18, 2015 and confirmed the pre-hearing conference. As the Board had not yet received a formal Notice of Appearance from the attorney, the notice and letter were sent to both the attorney and to petitioners directly at their address of record. The Board requested that the attorney return the Notice of Appearance and advised the parties that if the case was not settled the matter would go forward at hearing on September 18, 2015; and
6. Petitioners' attorney advised the Board by letter received on August 6, 2015 that his firm was not representing petitioners. As petitioners were previously sent the notice of hearing for September 18, 2015, the hearing remained scheduled for that date. The matter was not settled and the Board received no further communication from petitioners; and
7. Petitioners failed to attend or otherwise appear at the hearing; and
8. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on petitioners to prove that the orders under review are not valid or reasonable; and
9. Pursuant to Board Rule 65.24, "the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review pursuant to Section 65.41," unless application for reinstatement is made within five days after the scheduled hearing; and
10. Petitioners have not made any application for reinstatement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition be, and the same hereby is, dismissed in accordance with the Board's Rules.




Vilda Vera Mayuga, Chairperson
At Albany, New York



J. Christopher Meagher, Member
At Albany, New York

Absent

LaMarr J. Jackson, Member
At Rochester, New York



Michael A. Arcuri, Member
At Albany, New York

Dated and signed by the Members
of the Industrial Board of Appeals
on October 28, 2015.

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of, :

JUAN CRUZ VEYTA AND VEYTA'S BAKERY
CAFÉ CORP., :

Petitioners, :

DOCKET NO. PR 15-155

To Review Under Section 101 of the Labor Law: An Order to Comply with Article 6, an Order to Comply with Article 19, and an Order Under Articles 5 and 19 of the Labor Law, all dated March 11, 2015, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Juan Cruz Veyta, petitioner pro se and for Veyta's Bakery Café Corp.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Freddy Kaplan, of Counsel), for respondent.

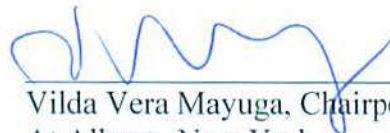
WHEREAS:

1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on May 15, 2015; and
2. Respondent Commissioner of Labor (Commissioner) filed an answer to the petition on June 15, 2015; and
3. Upon notice to the parties issued on June 23, 2015, a pre-hearing conference was scheduled for July 20, 2015 and a hearing for September 10, 2015. The notice was sent to petitioners at the address of record they supplied to the Board in their petition; and
4. Petitioners participated in the pre-hearing conference by an attorney who requested that the hearing be rescheduled because petitioner Veyta would be out of the country and unavailable on that date; and

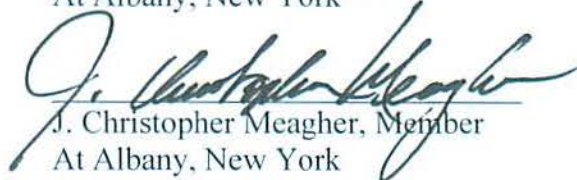
The orders sought to be reviewed were issued on March 10, 2015, and therefore, any petition for review filed with the Board with a postmark after May 11, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was postmarked after May 11, 2015, it was filed late and must be dismissed.

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.



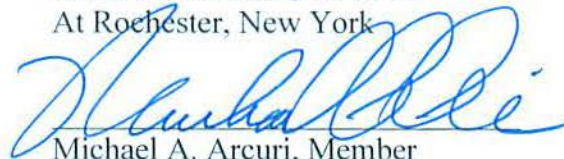
Vilda Vera Mayuga, Chairperson
At Albany, New York



J. Christopher Meagher, Member
At Albany, New York

Absent

LaMarr J. Jackson, Member
At Rochester, New York



Michael A. Arcuri, Member
At Albany, New York

Dated and signed by the Members
of the Industrial Board of Appeals
on October 28, 2015.