

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
ELISAS FOOD & PLUS NO 1, INC. (T/A ELISAS :
FOOD & PLUS), :
 :
 :
Petitioner, :
 :
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 May 19, 2015, :
 :
 :
- against - :
 :
THE COMMISSIONER OF LABOR, :
 :
Respondent. :
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DOCKET NO. PR 15-221
RESOLUTION OF DECISION

APPEARANCES

Elisa Pardo, for petitioner.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on July 24, 2015, in an envelope post-marked July 22, 2015. The Board served the petition on respondent Commissioner of Labor on August 12, 2015. Respondent moved on September 10, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner 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.”

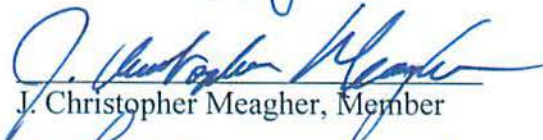
The orders sought to be reviewed were issued on May 19, 2015, and therefore, any *petition* for review filed with the Board with a post-mark after July 20, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)] and 65.3 [a] [12 NYCRR 65.3 (a)] [if last day of the 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]). As the petition in this proceeding was post-marked after July 20, 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.



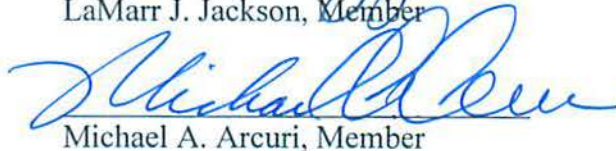
Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member



Michael A. Arcuri, Member

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

