

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
VLADISLAV B. YUSUFOV AND SIGNATURE :
INC. (T/A SHAZKA RESTAURANT), :
 :
 :
Petitioners, :
 :
 :
To Review Under Section 101 of the Labor Law: :
An Order To Comply With Article 19 of the Labor : RESOLUTION OF DECISION
Law, and an Order Under Article 19 of the Labor :
Law, both dated January 26, 2015, :
 :
 :
- against - :
 :
THE COMMISSIONER OF LABOR, :
 :
 :
Respondent. :
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DOCKET NO. PR 15-315

RESOLUTION OF DECISION

APPEARANCES

Beress & Zalkind PLLC (Viktoria Beress of counsel), for petitioners.

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

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on October 2, 2015 in a Federal Express wrapper shipped on September 30. The Board served the petition on respondent Commissioner of Labor on October 7, 2015. Respondent moved on October 21, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued.

Petitioners do not contest that the petition was filed after the statute of limitations had run, but argue the Board should accept the petition because an attorney petitioner originally consulted after receiving the orders did not “properly handle the matter.” The Board, however, cannot extend the statute of limitations to file a petition because of the possible professional malpractice of a third party (*Matter of Jose Bonilla*, PR 15-177 [September 16, 2015]).

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.”

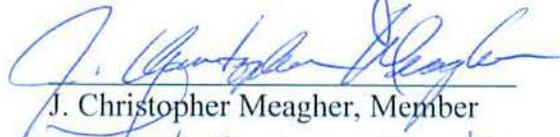
The orders sought to be reviewed were issued on January 26, 2015, and therefore, any petition for review filed with the Board with a post-mark after March 27, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] and 65.3 [a] [12 NYCRR 65.5 (d) and 65.3 (a)]). As the petition in this proceeding was post-marked after March 27, it was filed late and the alleged failure of petitioner’s previous attorney to file a timely appeal does not toll the statute of limitations or otherwise excuse the late filing.

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.



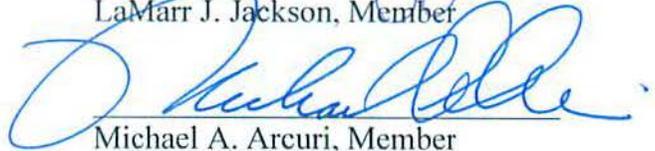
Vilda Vera Mayuga, Chairperson



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 Albany, New York
on January 20, 2016.