

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

ANGELA DE LA ROSA AND EL CONDE REST. :  
CORP. (T/A EL CONDE RESTAURANT), :

Petitioners, :

DOCKET NO. PR 15-348

To Review Under Section 101 of the Labor Law: :  
An Order To Comply With Article 19 of the Labor :  
Law, an Order to Comply With Article 6 of the Labor :  
Law, and an Order Under Articles 6 and 19 of the :  
Labor Law, each dated July 16, 2014, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :  
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**APPEARANCES**

Law Offices of Martin E. Restituyo, P.C. and Rodriguez Law P.C. (Argilio Rodriguez and Martin E. Restituyo 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 27, 2015 appealing orders issued by respondent Commissioner of Labor on July 16, 2014. The Board served the petition on respondent Commissioner of Labor on November 18, 2015. Respondent moved 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 file a timely appeal to the Board, which resulted in respondent entering judgment against petitioners to enforce the orders. We cannot extend the statute of limitations to file a petition because of the possible professional malpractice of a third party (*Matter of Vlaidslav Yusufov et al.*, PR 15-315 [January 20, 2016]; *Matter of Jose Bonilla*, PR 15-177 [September 16, 2015]).

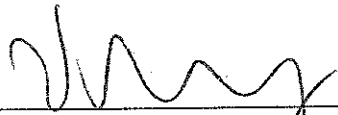
Labor Law § 101 (1) provides that:

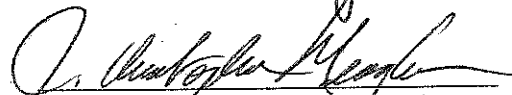
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . . Such petition shall be filed with the board no later than sixty days after the issuance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

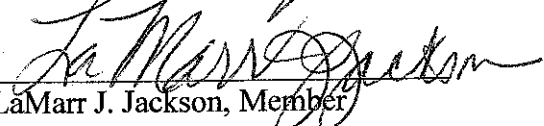
The orders sought to be reviewed were issued on July 16, 2014, and therefore, any petition for review filed with the Board after September 15, 2014, is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] and 65.3 [a] [12 NYCRR 65.5 (d) and 65.3 (a)]). As the petition in this proceeding was filed after September 15, 2014, it was filed late and the alleged failure of petitioners’ 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.

  
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Vilda Vera Mayuga, Chairperson

  
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J. Christopher Meagher, Member

  
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LaMarr J. Jackson, Member

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Michael A. Arcuri, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
at New York, New York  
on May 25, 2016.

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Michael A. Arcuri, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
at Utica, New York on  
May 25, 2016.