

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
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 :
POMADORO RISTORANTE & PIZZERIA INC. :
(T/A POMODORO RESTAURANT & PIZZERIA), :
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 :
Petitioner, :
 :
 :
To Review Under Section 101 of the Labor Law: :
An Order To Comply With Article 19, and an Order : DOCKET NO. PR 16-106
Under Articles 5 and 19 of the Labor Law, both dated : RESOLUTION OF DECISION
March 22, 2016, :
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 :
- against - :
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 :
THE COMMISSIONER OF LABOR, :
 :
 :
Respondent. :
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APPEARANCES

C.M. Fusco Law Group, P.C. (Carlo M. Fusco of counsel), for petitioner.

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

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on August 31, 2016. The Board served the petition on respondent Commissioner of Labor on September 7, 2016. Respondent moved on October 5, 2016, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner did not respond.

Labor Law § 101 (1) provides that:

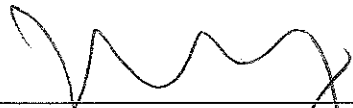
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . Such petition shall be filed with the board no later than sixty days after the issuance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

The orders sought to be reviewed were issued on March 22, 2016, and therefore, any petition for review filed with the Board with a post-mark after May 23, 2016 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) (when last day of statute of limitations falls on a Saturday, Sunday, or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday)]. As the petition in this proceeding was received by the Board after May 23, 2016, it was filed late and must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

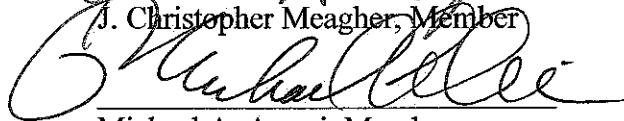
The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition is dismissed.



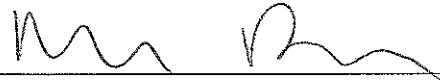
Vilda Vera Mayuga, Chairperson




J. Christopher Meagher, Member



Michael A. Arcuri, Member



Molly Doherty, Member



Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York, on
December 14, 2016.