

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

-----X  
In the Matter of the Petition of: :  
 :  
TRACY CUI YUN A/K/A TRACEY CUI YUN, :  
 :  
 :  
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 Articles 5 and 19 of the :  
Labor Law, both dated July 10, 2014, :  
 :  
 :  
- against - :  
 :  
THE COMMISSIONER OF LABOR, :  
 :  
 :  
Respondent. :  
-----X

DOCKET NO. PR 17-066  
RESOLUTION OF DECISION

**APPEARANCES**

*Tracy Yun*, petitioner pro se.

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

**WHEREAS:**

This proceeding was commenced when petitioner Tracy Yun filed a petition with the Industrial Board of Appeals on April 19, 2017, in an envelope post-marked April 18, 2017.<sup>1</sup> The Board served the petition on respondent Commissioner of Labor on April 21, 2017. On May 18, 2017, respondent moved to dismiss the petition because it was untimely filed. There is no dispute that the petition was filed more than 60 days after the orders were issued, but on June 15, 2017, petitioner responded in opposition arguing that the petition should be deemed timely due to defective service of process. On June 21, 2017, respondent replied.

At issue is whether service of the orders was defective. Labor Law § 101 (1) provides that a petition for review of orders issued by the Commissioner must be filed within 60 days of the date the orders were issued. Under Labor Law § 33, respondent may serve orders by mail at an employer’s last known place of business so long as the mailing is reasonably calculated to give notice (*Matter of Gambino et al.*, PR 10-150, at 3 n1 [Nov. 18, 2010]). Petitioner alleges that she did not receive the orders until February 16, 2017, when they were e-mailed to petitioner by counsel for respondent.

---

<sup>1</sup> The orders were also issued against Manhattan Review, LLC, which has not appealed the orders and is therefore not a party to this proceeding.

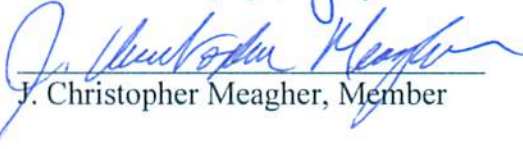
Service was proper. In her petition, petitioner states her mailing address is “90 La Salle Street, Unit 13G, New York, NY 10027.” Respondent, in its reply brief provided Manhattan Review LLC’s certificate of surrender of authority from the New York Department of State, which lists “Tracy Yun” as the corporation’s president and indicates that service on the corporation can be effected at “90 La Salle Street #13G, New York, NY 10027.” Respondent’s July 10, 2014, affidavit of service was served on petitioner at “90 LaSalle Street, Apt. 13G, New York, NY 10027.” Petitioner does not dispute the facial validity of respondent’s affidavit of service, and respondent represented that the mailing was not returned undeliverable. Once respondent produced the affidavits of service by the individual who did the mailing, petitioner’s statement of non-receipt is insufficient to overcome the presumption of proper mail service and due receipt (*Matter of Vadillo*, PR 15-367 at 1 [May 25, 2016]; *Matter of Astor*, PR 08-056 at 2 [March 24, 2010]). We, therefore, find that respondent properly served petitioner pursuant to Labor Law § 33, and, accordingly, the statute of limitations has run.

With proper service of the orders on petitioner, the petition is untimely and must be dismissed.


**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

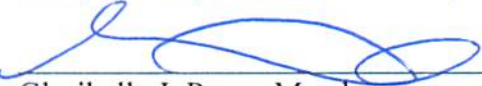
1. The Commissioner of Labor’s motion to dismiss the petition is granted; and
2. The petition for review is dismissed.

  
\_\_\_\_\_  
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  
July 26, 2017.