

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

DIEGO FLORES A/K/A DIEGO MANOSALVAS
AND NAZCA RESTAURANT CORP. (T/A
NAZCA RESTAURANT),

Petitioners,

DOCKET NO. PR 17-070

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6 and an Order
Under Article 19 of the Labor Law, both dated
February 16, 2017,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Diego Manosalvas, petitioner pro se, for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Taylor A. Waites*, J.D.),
for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on April 24, 2017, in an envelope post-marked April 20, 2017.¹ The Board served the petition on respondent Commissioner of Labor on May 4, 2017. Respondent moved on May 26, 2017, to dismiss the petition as untimely. 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.”

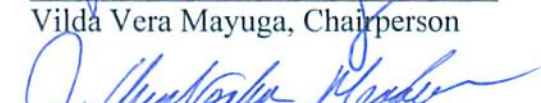
¹ The orders were also issued against Alex Manosalvas who did not appeal the underlying orders and is therefore not a party to this action.

The orders sought to be reviewed were issued on February 16, 2017, and therefore, any petition for review filed with the Board with a post-mark after April 17, 2017, is untimely (*id.*; Board Rules of Procedure and Practice [12 NYCRR] § 65.5 [d]). As the petition in this proceeding was post-marked after April 17, 2017, the petition was untimely 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 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.