

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
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 :
 JAVIER A. MOREL AND 1628 BATHGATE, LLC. :
 (T/A MAMITA'S FOODS), :
 :
 :
 Petitioners, :
 :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply with Article 19 of the Labor Law, : RESOLUTION OF DECISION
 and an Order Under Articles 5, 6, and 19 of the Labor :
 Law, both dated July 7, 2017, :
 :
 :
 - against - :
 :
 :
 THE COMMISSIONER OF LABOR, :
 :
 :
 Respondent. :
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DOCKET NO. PR 17-141

APPEARANCES

Manuel E. Franco, Accountant, Richmond Hill, for petitioners.
Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals on September 13, 2017, in an envelope post-marked September 12, 2017. The Board served the petition on respondent Commissioner of Labor on September 28, 2017. Respondent moved on October 27, 2017, to dismiss the petition as untimely. Petitioners responded to the motion by alleging without explanation that the petition was timely.

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 7, 2017, and therefore, any petition for review filed with the Board with a post-mark after September 5, 2017, is untimely (*id.*; Board

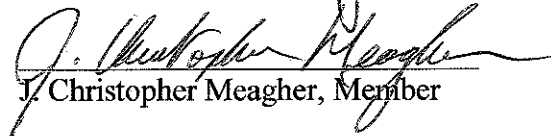
Rules of Procedure and Practice [12 NYCRR] § 65.5 [d]). As the petition in this proceeding was post-marked after September 5, 2017, the petition was untimely and must be dismissed.

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

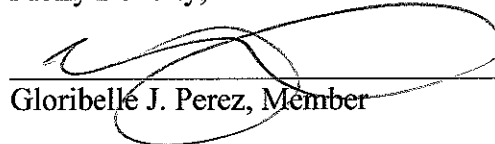


J. Christopher Meagher, Member

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
January 23, 2018.

Rules of Procedure and Practice [12 NYCRR] § 65.5 [d]). As the petition in this proceeding was post-marked after September 5, 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 a Member
of the Industrial Board of Appeals
in Utica, New York, on
January 23, 2018.