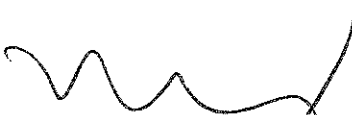


Petitioners do not deny that the petition was filed more than 60 days after the date of the orders. Rather, they oppose the motion to dismiss on the ground of improper service of the orders, alleging that the orders were mailed to petitioner Karayiannis's home address in Westbury, New York and were not received at petitioners' place of business in Rego Park, New York. Petitioners also assert that petitioner Karayiannis was not personally served with the orders.

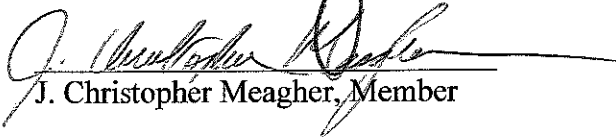
New York Labor Law § 33, entitled "Service of notice," requires that when "the commissioner . . . is required to give notice in writing to any person, such notice may be given by mailing it in a letter addressed to such person at his last known place of business or by delivering it to him personally." In this matter, respondent mailed the orders to a petitioner's home address; however, nothing in the record indicates that petitioner's home was his place of business and nothing in the record shows that the orders were served on petitioners at their business address. The burden of proof on a motion to dismiss a petition as untimely is respondent's (Board Rules of Procedure and Practice [12 NYCRR] § 65.30), and we find that respondent has not met that burden (*Matter of Angelo A. Gambino and Francesco A. Gambino (T/A Gambino Meat Market, Inc.)* PR 10-150 [interim decision, November 18, 2010]). Service has not been shown to be proper. Accordingly, respondent's motion to dismiss the petition as untimely is denied.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent's motion to dismiss the petition on the ground that it was not timely filed be, and hereby is, denied; and
2. Respondent shall serve and file an answer to the petition within 30 days of this Interim Resolution of Decision.

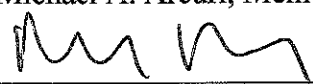


 Vilda Vera Mayuga, Chairperson



 J. Christopher Meagher, Member

 Michael A. Arcuri, Member



 Molly Doherty, Member

Absent

 Gloribelle J. Perez, Member

Dated and signed by the Members
 of the Industrial Board of Appeals
 in New York, New York, on
 June 6, 2018.

Petitioners do not deny that the petition was filed more than 60 days after the date of the orders. Rather, they oppose the motion to dismiss on the ground of improper service of the orders, alleging that the orders were mailed to petitioner Karayiannis's home address in Westbury, New York and were not received at petitioners' place of business in Rego Park, New York. Petitioners also assert that petitioner Karayiannis was not personally served with the orders.

New York Labor Law § 33, entitled "Service of notice," requires that when "the commissioner . . . is required to give notice in writing to any person, such notice may be given by mailing it in a letter addressed to such person at his last known place of business or by delivering it to him personally." In this matter, respondent mailed the orders to a petitioner's home address; however, nothing in the record indicates that petitioner's home was his place of business and nothing in the record shows that the orders were served on petitioners at their business address. The burden of proof on a motion to dismiss a petition as untimely is respondent's (Board Rules of Procedure and Practice [12 NYCRR] § 65.30), and we find that respondent has not met that burden (*Matter of Angelo A. Gambino and Francesco A. Gambino (T/A Gambino Meat Market, Inc.)* PR 10-150 [interim decision, November 18, 2010]). Service has not been shown to be proper. Accordingly, respondent's motion to dismiss the petition as untimely is denied.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent's motion to dismiss the petition on the ground that it was not timely filed be, and hereby is, denied; and
2. Respondent shall serve and file an answer to the petition within 30 days of this Interim Resolution of Decision.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



Michael A. Arcuri, Member

Molly Doherty, Member

Absent

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York, on
June 6, 2018.