

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :  
 :  
WILEY CHRISTOPHER HARRISON AND :  
BUSINESS OF YOUR BUSINESS, LLC T/A :  
BUSINESS OF YOUR BUSINESS, :  
 :  
Petitioners, : DOCKET NO. PR 18-022  
 :  
To Review Under Section 101 of the Labor Law: : RESOLUTION OF DECISION  
An Order to Comply with Articles 6 and 19 of the :  
Labor Law, dated March 12, 2018, :  
 :  
- against - :  
 :  
THE COMMISSIONER OF LABOR, :  
 :  
Respondent. :  
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**APPEARANCES**

*The St. Paul Law Firm*, White Plains (*Richard St. Paul* of counsel), for petitioners.  
  
*Pico Ben-Amotz*, General Counsel, NYS Department of Labor, Albany (*Robert F. Axisa* of counsel), for respondent.

**WHEREAS:**

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on May 15, 2018 in a FedEx envelope marked for priority/overnight mailing and post-marked by FedEx on May 14, 2018. The Board served the petition on respondent Commissioner of Labor on May 18, 2018. Respondent moved on June 11, 2018 to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. In opposition to the motion, petitioners contend the petition was timely submitted to FedEx on May 11, 2018, as indicated by the handwritten date on the air bill filled out by the sender, and was not picked up because the envelope “was placed in the wrong mail bin or fell between the crack of the two mail boxes,” resulting in the envelope being returned to its sender and then accepted by FedEx on May 14, 2018 for overnight delivery one day later. Petitioners allege that but for the error in putting the petition in the wrong collection box or having it fall between collection boxes with the result that the petition was accepted for delivery by FedEx on May 14, 2018, the petition would have been timely filed.

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 to be reviewed were issued on March 12, 2018; therefore, any petition for review filed with the Board with a post-mark after May 11, 2018 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)]). It is undisputed that the petition was filed late as it was not accepted by FedEx and not post-marked until May 14, 2018. Failure to file a petition within 60 days of issuance of the orders is a “fatal defect” (*Matter of Budget Tire Automotive, Inc. v O’Dell*, 223 AD2d 988, 989 [3d Dept 1996]). Law office failure cannot excuse petitioners’ failure to comply with the 60-day statute of limitations (*Galanos v City of New York*, 35 AD2d 829, 830 [2d Dept 1970]; *Matter of Zuleyha Akcay a/k/a Julie Akcay and Banco Building LLC (T/A Arcade Department Store)*, PR 15-297, at p. 2 [April 13, 2016]); *Matter of Econopouly*, PR 13-180, at p. 3 [January 20, 2016] [petition granted where law office failure did not excuse respondent’s late filing of a pleading]. Here, the petition was untimely due to law office failure and as such, respondent’s motion must be granted, and the petition 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 be, and the same hereby is, dismissed.

  
Molly Doherty, Chairperson

  
J. Christopher Meagher, Member

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Michael A. Arcuri, Member

  
Gloribelle J. Perez, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
in New York, New York, on  
October 24, 2018.

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Dated and signed by a Member  
of the Industrial Board of Appeals  
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October 24, 2018.

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Gloribelle J. Perez, Member