

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MICHAEL JOSEPH FILIPPONE, SR. A/K/A
MICHAEL FILIPPONE AND PRIMA
CONTRACTING LTD,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Articles 5, 6, and 19 of the
Labor Law, dated November 5, 2018,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 19-008

RESOLUTION OF DECISION

APPEARANCES

Michael Filippone, for petitioners pro se.

Pico P. Ben-Amotz, General Counsel, NYS Department of Labor, Albany (Steven J. Pepe of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on January 17, 2019 in an envelope post-marked January 5, 2019. The Board served the petition on respondent Commissioner of Labor on January 25, 2019. Respondent moved on February 25, 2019 to dismiss the petition as untimely and for failure to state a cause of action. Petitioners did not respond to the motion.

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 November 5, 2018, and therefore, any petition for review filed with the Board with a post-mark after January 4, 2019 is untimely (Labor Law §

101 (1); Board Rules of Procedure and Practice (Board Rules) [12 NYCRR] §§ 65.5 [d]; 65.3 [a]). As the petition in this proceeding was post-marked after January 4, 2019, the petition was untimely and must be dismissed.

The Board does not need to reach the question of whether the petition should also be dismissed for failure to state a cause of action.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

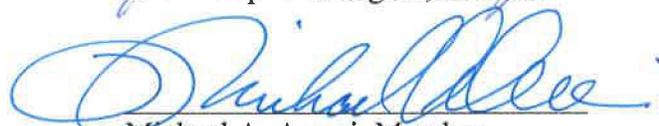
The Commissioner of Labor's motion to dismiss the petition for untimeliness is granted, and the petition for review be, and the same hereby is, dismissed.



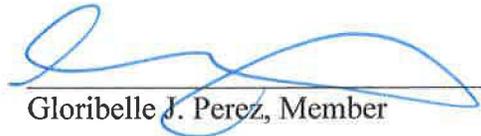
Molly Doherty, Chairperson



J. Christopher Meagher, Member



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 May 29, 2019.