

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X
In the Matter of the Petition of:

ERIC VADILLO A/K/A ERICK VADILLO AND
PARAGON HOME DESIGNS, INC.,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order To Comply With Article 6 of the Labor
Law, and an Order Under Article 19 of the Labor
Law, both dated August 16, 2012,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
-----X

DOCKET NO. PR 15-367

RESOLUTION OF DECISION

APPEARANCES

Law Offices of Gregory J. Gallo, P.C. (Gregory J. Gallo of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Benjamin T. Garry of counsel),
for respondent.


WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on November 9, 2015 appealing orders issued by respondent Commissioner of Labor on August 16, 2012 against petitioners. After the Board served the petition on respondent, respondent filed a motion to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners do not contest that the petition was filed after the 60 day statute of limitations to appeal the orders had run (Labor Law § 101 [1]), but allege that respondent did not show proof that the orders were served. An affidavit of service attached to respondent's reply to petitioners' opposition to the motion shows the orders were mailed to petitioners on August 16, 2012, the same date the orders were issued and to the same address shown on the orders. None of the papers filed in this matter by petitioners allege that the address for petitioners shown on the orders was not or is not petitioners' business address. Labor Law § 33 authorizes respondent to serve orders to comply by regular mail at a party's last known business address. Respondent having produced an affidavit of service, petitioners' bald statement of non-receipt is insufficient to overcome the presumption of proper mail service and due receipt (*Matter of Jeffrey Astor*, PR 08-056 [March 24, 2010]).

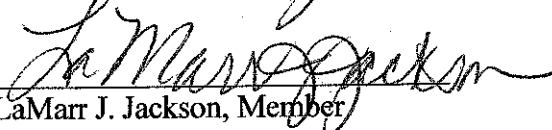
Because the petition was indisputably filed long after the 60 day statute of limitations to appeal the orders had run, respondent offered proof of service of the orders, and there is no evidence from petitioners that the address the orders were mailed to was not petitioners' last known address at the time of mailing, we find the petition is untimely and grant respondent's motion to dismiss.

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.



Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on May 25, 2016.

Because the petition was indisputably filed long after the 60 day statute of limitations to appeal the orders had run, respondent offered proof of service of the orders, and there is no evidence from petitioners that the address the orders were mailed to was not petitioners' last known address at the time of mailing, we find the petition is untimely and grant respondent's motion to dismiss.

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.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York on
May 25, 2016.