

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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

FRICKLY MEJIA AND MOHAMMED EL
BAROUDY AND F & M USED TIRES INC.,

Petitioners,

To Review Under Section 101 of the Labor Law: An
Order to Comply with Article 19 of the Labor Law
and an Order Under Article 19 of the Labor Law,
each dated July 2, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
-----X

DOCKET NO. PR 15-266

RESOLUTION OF DECISION

APPEARANCES

Peggiann McCoy, Certified Public Accountant, for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 2, 2015, in an envelope postmarked September 1, 2015. The Board served the petition on respondent Commissioner of Labor on September 14, 2015. Respondent moved on October 13, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners did not reply to the motion.

Labor Law § 101 (1) states that:

“[e]xcept 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.”

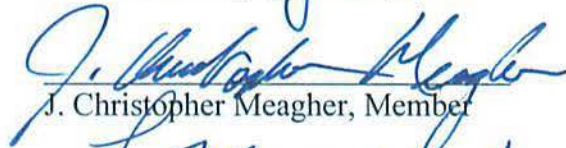
The orders sought to be reviewed were issued on July 2, 2015, and therefore, any petition for review filed with the Board with a post-mark after August 31, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was post-marked after August 31, 2015, it was filed late 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 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 December 9, 2015.

