

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
JIANYU YAO AND YAO'S DINER INC.,	:
	:
Petitioners,	:
	:
To Review Under Section 101 of the Labor Law:	:
An Order To Comply With Article 19, and an Order :	DOCKET NO. PR 16-081
Under Article 19 of the Labor Law, both dated April :	<u>RESOLUTION OF DECISION</u>
29, 2016,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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**APPEARANCES**

The Kasen Law Firm, PLLC, Flushing (Joshua S. Lee of counsel), 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 June 30, 2016 in an envelope post-marked June 29, 2016. The Board served the petition on respondent Commissioner of Labor on June 30, 2016. Respondent moved on July 25, 2016, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner opposed the motion on August 24, 2016, alleging that the petition is timely because the Board Rules indicate that "the day from which the designated period begins to run shall not be included" in the computation (Board Rules of Procedure and Practice 65.3 [a] [12 NYCRR 65.3 (a)]). Petitioners are correct in their statement, but incorrect in their computation.

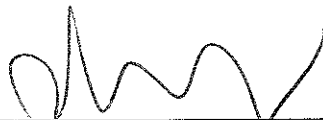
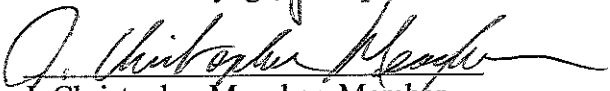
Labor Law § 101 (1) provides that:

"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 sought to be reviewed were issued on April 29, 2016, and therefore, any petition for review filed with the Board with a post-mark after June 28, 2016 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 June 28, 2016, 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.

  
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Vilda Vera Mayuga, Chairperson  
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J. Christopher Meagher, Member  
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Michael A. Arcuri, Member  
\_\_\_\_\_  
Molly Doherty, Member  
\_\_\_\_\_  
Gloribelle J. Perez, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
in New York, New York, on  
September 14, 2016.

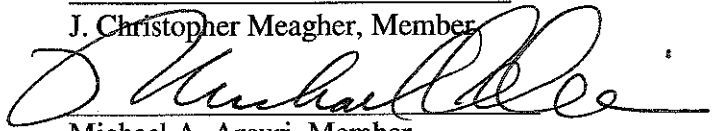
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Vilda Vera Mayuga, Chairperson

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J. Christopher Meagher, Member

  
Michael A. Arcuri, Member

\_\_\_\_\_  
Molly Doherty, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
in Syracuse, New York, on  
September 14, 2016.

\_\_\_\_\_  
Gloribelle J. Perez, Member