

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MAY STREET RESTAURANT,

Petitioner,

To Review Under Section 101 of the Labor Law:
Two Orders to Comply with Article 6 of the Labor
Law, and an Order Under Article 19 of the Labor Law,
all dated March 3, 2017,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 17-083

RESOLUTION OF DECISION

APPEARANCES

Kathleen Bates, for petitioner.

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

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals on May 8, 2017, in an envelope post-marked May 5, 2017. The Board served the petition on respondent Commissioner of Labor on May 18, 2017. Respondent moved on August 14, 2017, to dismiss the petition as untimely. Petitioner replied to the motion without disputing timeliness of petition and instead asserting that the orders should be revoked because of a bankruptcy proceeding involving May Street Restaurant.

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.”

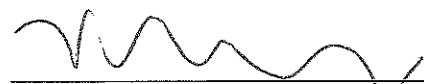
The orders sought to be reviewed were issued on March 3, 2017, and therefore, any petition for review filed with the Board with a post-mark after May 2, 2017, is untimely (*id.*; Board Rules

of Procedure and Practice [12 NYCRR] § 65.5 [d]). Petitioner's assertion that May Street Restaurant's bankruptcy exonerates it from any debt, including the orders on review does not address the timeliness issue. As we have previously held, a bankruptcy proceeding or order has no bearing on the reasonableness and validity of orders issued by respondent but is only relevant to their eventual enforcement (*Matter of Jason Ellis et al.*, PR 11-245 at p 2 [January 30, 2012]).

As the petition in this proceeding was post-marked after May 2, 2017, and petitioner provides no legally sufficient reason to excuse its late filing, the petition was untimely and must be dismissed.

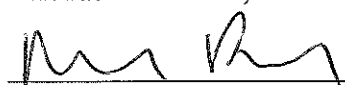
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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



Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

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
January 23, 2018.

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Vilda Vera Mayuga, Chairperson

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Michael A. Arcuri, Member

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Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York, on
January 23, 2018.