

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MICHAEL RICOTTA, JR. A/K/A MIKE RICOTTA :
AND SAM BERNSTEIN (T/A EMMONS AVENUE :
CONDOMINIUM) ALSO (T/A EMMONS :
AVENUE CONDOMINIUM/1 REWE STREET), :

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 6 of the Labor Law, :
both dated May 11, 2015, :

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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DOCKET NO. PR 15-213

RESOLUTION OF DECISION

APPEARANCES

Abby Taye, Office Manager, 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 July 16, 2015, in an envelope post-marked July 15, 2015. The Board served the petition on respondent Commissioner of Labor on July 28, 2015. On August 21, 2015, respondent moved to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. The petitioners did not reply 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.”

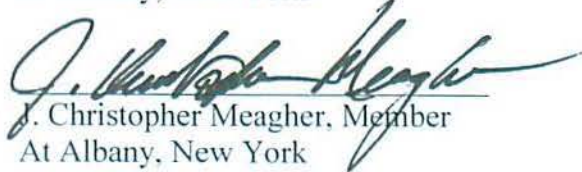
The orders sought to be reviewed were issued on May 11, 2015, and therefore, any petition for review filed with the Board with a post-mark after July 10, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was post-marked after July 10, 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
At Albany, New York



J. Christopher Meagher, Member
At Albany, New York

Absent

LaMarr J. Jackson, Member
At Rochester, New York



Michael A. Arcuri, Member
At Albany, New York

Dated and signed by the Members
of the Industrial Board of Appeals
on October 28, 2015.