

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MOHAMMED MALIK AND 133 PLUS 24  
SANFORD AVE. REALTY CORP.,

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 Articles 6, 7 and 19 of the  
Labor Law, each dated July 15, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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DOCKET NO. PR 15-290

RESOLUTION OF DECISION

**APPEARANCES**

Horing Welikson & Rosen, P.C. (Richard T. Walsh 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 September 18, 2015, in an envelope lacking a postmark. The Board served the petition on respondent Commissioner of Labor on September 29, 2015. Respondent moved on October 21, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners opposed motion stating that petitioners' counsel had mailed the petition himself on September 16, 2015, without realizing that the date setting on the postage meter had been turned off.

Labor Law § 101 (1) provides that:

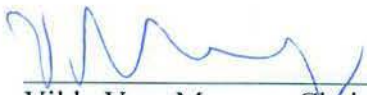

“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on July 15, 2015; therefore, any petition for review filed with the Board with a post-mark after September 14, 2015 is untimely (*id.*; Board Rule of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)] and 65.3 [a] [12 NYCRR 65.3 (a)] [if last day of the period falls on a legal holiday, Saturday, or Sunday the period runs until the end of the next day that is not a legal holiday, Saturday, or Sunday]) and must be dismissed.

Petitioners do not dispute that the petition was filed after September 14, 2015. Rather, they argue the petition was “timely mailed under the circumstances” and suggest that the Board should grant an exception for the petition’s “untimeliness.” Petitioners assert that the petition was mailed on September 16, 2015 because counsel for petitioners had observed a religious holiday on the two days prior to mailing. Petitioners also argue that Section 25-a of the New York General Construction Law permits them a five-day extension for mailing. These arguments are unavailing. There was no legal holiday on September 14, 2015 or September 15, 2015 that would have extended petitioners’ time to serve the petition. Additionally, reliance on the General Construction Law is misplaced in this proceeding, which is governed, as set forth above, by the New York Labor Law and by the Board’s Rules of Procedure and Practice. By the admission of petitioners’ counsel, the petition was mailed after September 14, 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.

  
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Vilda Vera Mayuga, Chairperson  
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J. Christopher Meagher, Member  
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LaMarr J. Jackson, Member  
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Michael A. Arcuri, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York  
on January 20, 2016.