

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X	
In the Matter of the Petition of:	:
	:
THE ABATE, INC. (T/A ELDA'S ON LARK),	:
	:
Petitioner,	:
	:
To Review Under Section 101 of the Labor Law:	:
An Order to Comply with Article 6 of the Labor Law,	:
and an Order to Comply with Article 19 of the Labor	:
Law, and an Order Under Article 19 of the Labor Law,	:
all issued September 2, 2008,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
-----X	

DOCKET NO. PR 09-019

RESOLUTION OF DECISION


WHEREAS:

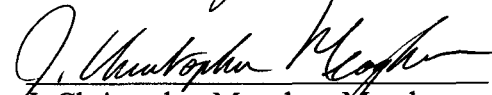
1. On January 29, 2009 the Board received a letter in the above-referenced matter which was enclosed in an envelope postmarked January 27, 2009, but that did not include a copy of the Orders to be reviewed.
2. By letter dated February 10, 2009, the Board requested that the Petitioner file an Amended Petition with a complete copy of the Order or Orders to be appealed by February 27, 2009.
3. On February 26, 2009, the Petitioner filed four copies of the Orders to be appealed. The Orders were issued on September 2, 2008. Accordingly, by letter dated April 28, 2009, the Board sent a letter to the Petitioner stating that the appeal appeared untimely as the original Petition was filed on January 27, 2009 which was more than 60 days from the date the Orders were issued (Labor Law § 101). The Board, in its letter of February 26, 2009, requested that the Petitioner file a written explanation of why it is contended that the Petition was not untimely.
4. On May 28, 2009, the Board received several affidavits from the Petitioner's employees. Although these affidavits did not explain why the Petition was filed late, the Petition, Orders, and affidavits were served on the Commissioner of Labor on July 20, 2009.

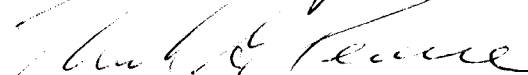
5. The Respondent Commissioner of Labor filed a motion to dismiss the Petition dated August 24, 2009 alleging that the Petition must be dismissed as untimely.
6. The Petitioner's response to the Respondent's motion did not articulate a reason for the late filing of the Petition, instead stating that the affidavits previously filed demonstrate that the claimants were paid. However, as the Petition was filed late, we do not review the merits of the Petitioner's allegations that the Orders are invalid or unreasonable.
7. Labor Law § 101 provides that a petition for review must be filed with the Board no later than sixty days after the issuance of the Order to be reviewed. The Orders to be reviewed were issued on September 2, 2008 and the Petition was not filed until January 27, 2009. Therefore, the Petition was untimely. No excuse was offered to justify such late filing. Accordingly, the Petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

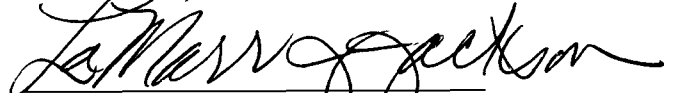
1. The Orders to Comply with Articles 6 and 19 of the Labor Law, and the Order under Article 19 of the Labor Law, all issued September 2, 2008, are hereby affirmed; and
2. The petition is hereby dismissed.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grumet, Member


LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
November 17, 2009.