

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
GREGORY LORENZO AND LORENZO HOLDING	:
CORP. (T/A ROCKET EXPRESS DELIVERY),	:
	:
Petitioners,	:
	:
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, dated January 7, 2009,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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DOCKET NO. PR 09-094
RESOLUTION OF DECISION

APPEARANCES

Damon & Morey LLP, Randolph C. Oppenheimer, Esq., for Petitioners.
Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for the Respondent.

WHEREAS:

On April 20, 2009, the Petitioners filed a petition with the Board seeking to appeal three Orders that the Respondent Commissioner of Labor (Respondent) issued against them on January 7, 2009. Because Labor Law § 101 (1) provides that a petition to review an order of the Commissioner of Labor “shall be filed with the board no later than sixty days after the issuance of . . . [the] order,” and the petition in this matter was filed more than sixty days from the date the Orders were issued, the Board wrote to the Petitioners on May 1, 2009, requesting a written explanation of why the Petitioners contend that their petition is not untimely.

On June 2, 2009 the Petitioners filed an amended petition and enclosed an affidavit of their Financial Officer detailing her correspondence, which included payments, with the Respondent after the Orders had issued and arguing that she thought the matter had been resolved and if not, Respondent should have forwarded her correspondence to the Board.

The Board served the amended petition and affidavit on the Respondent on June 9, 2009. By motion dated July 13, 2009, the Respondent moved to dismiss the petition as untimely. The Respondent argues that the petition was not timely filed and that the correspondence sent by the Petitioners to the Respondent, including payments,

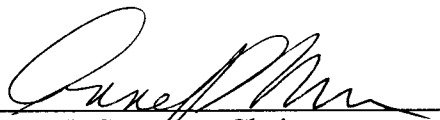
was not a petition to the Board. We agree with the Respondent, particularly where two of the letters the Respondent sent to the Petitioners in response to their correspondence specifically instructed the Petitioners to file an appeal with the Board if they wished to challenge the Orders. Each letter stated in bold, underlined language that **“if you are aggrieved, a review of the Order may be requested by filing a petition with the Industrial Board of Appeals, Empire State Plaza, Agency Building #2, 20th Floor, Albany, NY 12223 within sixty (60) days of the date of the Order”** (emphasis in original). Furthermore, we observe that Respondent’s letters of January 29, 2009 and February 26, 2009 were sent to Petitioners well before their sixty-day statute of limitations to file a petition had expired. We additionally note that Respondent credited Petitioners with the payments received and accordingly reduced the amounts due.

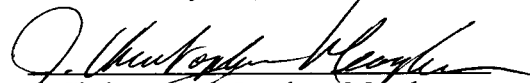
The Petitioners’ response to the motion repeats and re-alleges that their letters contested the Orders, were sent within sixty days of the Orders’ issuance, should have been forwarded by Respondent to the Board, and should be considered their petition. Petitioners add that Respondent’s direction left them confused as to the proper way to proceed. In reply, Respondent states that Respondent and the Board are two separate entities; Respondent is under no duty to forward letters to the Board; and more importantly, Respondent had repeatedly informed Petitioners that if they wanted to appeal, they should file a petition with the Board.

The Board concludes that Petitioners have failed to establish a basis to find that their petition was timely filed, particularly where, before their limitations period had expired, the Respondent twice advised them in writing and in unambiguous terms that to challenge the Orders they must file an appeal with the Board within sixty days of the Orders’ issuance and additionally explained how to file an appeal. Because the petition was filed late, the Board does not have jurisdiction over this matter and may not review the Petitioners’ substantive allegations concerning the Orders. Accordingly, the petition must be dismissed as untimely.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

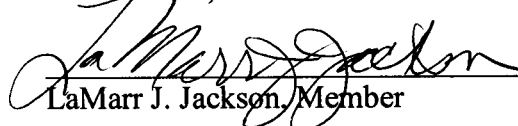
The petition and amended petition be, and the same hereby are, dismissed in accordance with the Board’s Rules.


Anne P. Stevenson, Chairman


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Guimet, Member


LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
December 14, 2009.