

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MICHAEL MONTALVO AND MONTALVO
CONSTRUCTION,

Petitioners,

DOCKET NO. PR 09-122

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 January 23, 2009,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Michael Montalvo, *pro se*, for Petitioners.

Maria L. Colavito, Counsel, New York State Department of Labor, Larissa C. Wasyl of
Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the Petitioners filed a petition with the Industrial Board of Appeals (Board) on May 29, 2009 in an envelope post-marked May 27, 2009 seeking review of three orders that Respondent Commissioner of Labor (Commissioner) issued on January 23, 2009.

The petition was served on the Commissioner on March 1, 2010. The Commissioner moved on March 26, 2010 to dismiss the petition as untimely. The Petitioners did not respond to the motion.

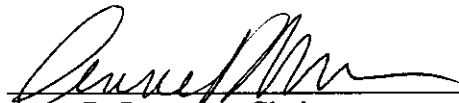
Labor Law § 101 (1) states that:


“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 January 23, 2009, and therefore, any petition for review filed with the Board after March 24, 2009 would be untimely (Board Rules 65.5 and 65.3 [a] [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until May 29, 2009 in an envelope post-marked May 27, 2009, it was untimely, and the Petitioners, having failed to respond to the Commissioner’s motion to dismiss, have offered no grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor’s motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
October 20, 2010.

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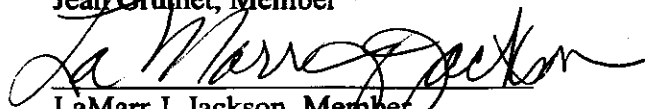
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