NABILL CHEIKHALI AND NM TRANSPORTATION INC. (T/A NM TRANSPORTATION)

Docket No. PR 09-169

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:	
NABIL CHEIKHALI and NM TRANSPORTATION, INC. (T/A NM TRANSPORTATION),	
Petitioners,	
	DOCKET NO. PR 09-169
To Review Under Section 101 of the Labor Law: An Order to Comply with Article 6 and an Order under Article 19 of the Labor Law, dated April 22, 2009,	RESOLUTION OF DECISION
- against -	
THE COMMISSIONER OF LABOR,	
Respondent.	

APPEARANCES

Nabil Cheikhali, *pro se*.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when Petitioners filed a petition with the Industrial Board of Appeals (Board) on July 1, 2009, seeking review of two orders that Respondent Commissioner of Labor (Commissioner) issued on April 22, 2009. Because the petition did not set forth the basis of the appeal, the Board requested by letter dated July 10, 2009, that the Petitioners file an amended petition. The Board received the amended petition on August 10, 2009.

The petition and amended petition filed on behalf of Petitioners were served on Respondent on August 13, 2009. In response, on September 17, 2009, the Commissioner filed an "affirmation in opposition to the petition" on the grounds that the petition was untimely. The Board advised the Commissioner by letter dated October 6, 2009, that her affirmation in opposition did not constitute an answer or motion as required by Board Rules 66.5 (a) (12 NYCRR 65.5 [a]) and allowed her 30 days to file an answer or motion in this matter.

The Commissioner moved on November 4, 2009 to dismiss the petition as untimely. 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 April 22, 2009, and therefore, a petition for review would be timely if filed with the Board no later than June 22, 2009 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was postmarked July 1, 2009. The petition was therefore untimely, and the Petitioners, having failed to respond to the Commissioner's motion to dismiss, have offered no sufficient grounds for excusing such untimely filing[1]. 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

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 21, 2010.

[1] We note that the Petitioners suggest in the amended petition that a petition was mailed on June 1, 2009, but the Petitioners have offered no proof for this claim and the Board has no record that a petition was ever received in this matter prior to July 6, 2009.