

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JAMAL UDDIN AND JAMIL MD UDDIN AND :  
TECHNO INTERNATIONAL CORP. (T/A GREEN :  
CAFÉ), :

Petitioners, :

DOCKET NO. PR 09-215

To Review Under Section 101 of the Labor Law: :  
An Order to Comply With Article 19 of the Labor Law :  
and an Order Under Article 6 of the Labor Law, each :  
dated April 27, 2009, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :

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APPEARANCES

MM Ali, Director of Accounts, *pro se*, for Petitioners.

Maria L. Colavito, Counsel, New York State Department of Labor, Benjamin A. Shaw, of  
counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the Petitioners filed a petition with the Industrial Board of Appeals (Board) on August 5, 2009 in an envelope post-marked August 3, 2009, seeking review of two orders that the Respondent Commissioner of Labor (Commissioner) issued on April 27, 2009.


The petition was served on the Commissioner on September 19, 2009. The Commissioner moved on October 23, 2009 to dismiss the petition as untimely and for failure to state a cause of action upon which relief could be granted. The Board denied the Commissioner's motion by letter dated January 7, 2010, because although the petition was filed late, the Petitioners did send a letter to the Department of Labor (DOL) contesting the orders within the 60 day statute of limitations period which DOL did not respond to until after the limitations period had expired. We found that under those circumstances, that the Petitioners had made a good faith attempt to file a timely appeal.

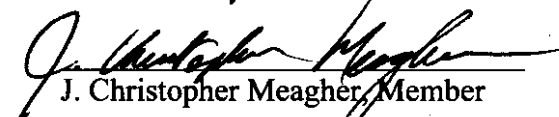
On January 21, 2010, the Commissioner moved for reconsideration of the Board's decision of January 7, 2010, denying the Commissioner's motion to dismiss, because the Board's decision did not address the Commissioner's allegation that the petition does not set forth a ground upon which relief could be granted. By letter dated April 23, 2010, the Board granted the Commissioner's motion for reconsideration and directed the Petitioners to file an amended petition on or before May 23, 2010 specifying the specific grounds as to why the orders are unreasonable and/or invalid. The Petitioners failed to file an amended petition as directed.

By Resolution of Decision dated June 23, 2010, the Board dismissed this matter due to the petitioner's failure to comply with the Board's directive to file an amended petition on or before May 23, 2010. Thereafter, the petitioners filed a Motion for Reconsideration dated July 10, 2010 stating that they did not receive the Board's letter directing them to file an amended petition. Since the petitioners have actively prosecuted their appeal and responded to other requests on a timely basis, we grant the Motion for Reconsideration.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Petitioners' motion for reconsideration is granted; and
2. The Board's Resolution of Decision in this matter issued June 23, 2010 is revoked; and
3. The petition filed on August 8, 2009 is reinstated; and
4. Petitioners have until November 22, 2010 to file an amended petition to specify the grounds that they maintain that the Commissioner's Orders are unreasonable or invalid.

  
Anne P. Stevason, Chairman

  
J. Christopher Meagher, Member

  
Jean Grumet, 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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LaMarr J. Jackson, Member

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Jeffrey R. Cassidy, Member

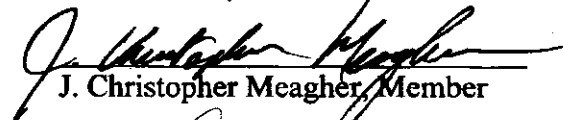
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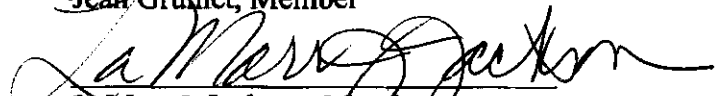
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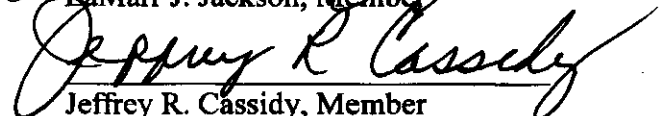
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