

**RALPH D'ALESSANDRO (T/A RALPH D'ALESSANDRO
RACING STABLE) (WORK LOCATION) BELMONT
RACETRACK**

Docket No. PR 09-267

Ralph D'Alessandro (T/A Ralph D'Alessandro Racing Stable)
(Work Location) Belmont Racetrack)

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

RALPH D'ALESSANDRO (T/A RALPH
D'ALESSANDRO RACING STABLE) (WORK
LOCATION) BELMONT RACETRACK, :

Petitioners, :

DOCKET NO. PR 09-267

To Review Under Section 101 of the Labor Law: An Order under Article 19 of the Labor Law, dated July 10, 2009, :

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Ralph D'Alessandro, *pro se*.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin T. Garry of Counsel, for Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when the Petitioner filed a petition with the Industrial Board of Appeals (Board) on September 22, 2009, seeking review of an order that Respondent Commissioner of Labor (Commissioner) issued on July 10, 2009.

The petition was served on Respondent on September 29, 2009. The Commissioner moved on November 2, 2009 to dismiss the petition as untimely. The Petitioner 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 July 10, 2009, and therefore, a petition for review would be timely if filed with the Board no later than September 8, 2009 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was post-marked September 22, 2009. The petition was therefore untimely, and the Petitioner, having failed to respond to the Commissioner's motion to dismiss, has offered no sufficient 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 Jackson, Member

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