

MARCIA CAMPBELL AND WHITEWING REAL ESTATE, INC.

Docket No. PR 09-283

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MARCIA CAMPBELL AND WHITEWING REAL
ESTATE, INC.,

Petitioners,

To Review Under Section 101 of the Labor Law: An
Order To Comply With Article 6 of the Labor Law
and an Order Under Article 19 of the Labor, both
dated July 23, 2009,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO 09-283

RESOLUTION OF DECISION

APPEARANCES

Marcia Campbell, *pro se*, for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Wasyl 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 October 1, 2009, seeking review of two orders that Respondent Commissioner of Labor (Commissioner) issued on February 9, 2010. The amended petition alleges that the petition was filed late because the Petitioners had been in constant contact with a Department of Labor (DOL) investigator and that on June 26, 2009, such investigator requested that the Petitioners submit information which they did submit in a timely manner. The Petitioners contend that they were never told to send an appeal to any other New York agency.

The petition and a subsequent amended petition were served on Respondent on February 9, 2010. The Commissioner moved on February 24, 2010 to dismiss the petition as untimely. The Petitioners' response to the Commissioner's motion again asserts that the Petitioners had been in constant contact with a DOL investigator and that they "were under the impression that the Department of Labor and the Industrial Board of Appeals was the same department and all letters that I sent would also, be received by both departments" (sic).

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.”

Additionally, the orders themselves clearly stated that:

“If you are aggrieved by this Order, you may appeal within 60 days from date issued to the Industrial Board of Appeals as provided by Section 101 of the Labor Law. Your appeal should be addressed to the Industrial Board of Appeals, Empire State Plaza, Agency Building #2, 20th Floor, Albany, NY 12223.”

The orders sought to be reviewed were issued on July 23, 2009, which we note is after the DOL investigator requested information from the Petitioners, and therefore, a petition for review would be timely if mailed to the Board no later than September 21, 2009 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was postmarked October 1, 2009, which was apparently prompted by a collection letter dated September 25, 2009 sent by the Respondent to the Petitioners. The petition was therefore untimely, and the Petitioners, have offered no sufficient grounds for excusing such untimely filing particularly where the orders themselves explicitly explain the statute of limitations for an appeal and give instructions concerning where to file. Accordingly, the petition must be dismissed.

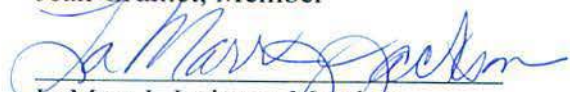
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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.