

**ROLANDO LANTIGUA AND EL GENERALISIMO  
RESTAURANT, INC. (T/A HISPONIOLA RESTAURANT)**

**Docket No. PR 09-331**

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

ROLANDO LANTIGUA AND EL GENERALISIMO :  
RESTAURANT, INC. :  
(T/A HISPANIOLA RESTAURANT), :

Petitioners, :

DOCKET NO. PR 09-331

To Review Under Section 101 of the Labor Law: :  
Orders to Comply under Article 6, 19 of the Labor :  
Law, dated August 21, 2009, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :  
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APPEARANCES

Rolando Lantigua , *pro se* Petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw 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 November 16, 2009, seeking review of three orders that Respondent Commissioner of Labor (Commissioner) issued on August 21, 2009.

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 August 21, 2009, and therefore, a petition for review would be timely if filed with the Board no later than October 20, 2009

(Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was filed on November 16, 2009. The petition was therefore untimely.

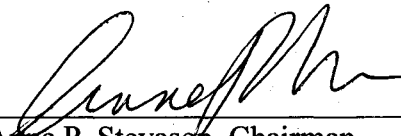
By letter dated December 2, 2009 the Board requested a written explanation for the untimely petition, advising such explanation must be supported by proof, including an affidavit by Petitioner or someone else with personal knowledge of the relevant facts. In response, the Board received a letter on January 4, 2010 from Petitioner.

Petitioner's letter did not provide an explanation for the untimely filing other than to assert her theory as to why Respondent's orders were "invalid" and that she was "overwhelmed" by "a tragedy in [her] family." Petitioner's letter was not supported by an affidavit by the Petitioner or someone else with knowledge of the relevant facts. The fact that the Petitioner felt the Respondent's orders were without merit or that Petitioner was overwhelmed by familial matters, does not justify the Petitioners' failure to meet the filing deadline imposed by Labor Law § 101.

Moreover, the petition was served on Respondent on February 8, 2010 and the Commissioner moved on March 15, 2010 to dismiss the petition as untimely. 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.

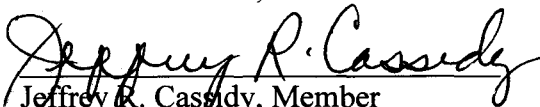
  
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Anne P. Stevason, Chairman

  
\_\_\_\_\_  
J. Christopher Meagher, Member

  
\_\_\_\_\_  
Jean Grumet, Member

Absent

\_\_\_\_\_  
LaMarr J. Jackson, Member

  
\_\_\_\_\_  
Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at Albany, New York, on  
May 26, 2010.