

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 MARK FINELL, MICHAEL LAMARTI, and :
 CRAFT MARKETING, LLC, :
 :
 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 Law, both :
 dated January 15, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 10-110

RESOLUTION OF DECISION

APPEARANCES

Mark Finell, *pro se*, for the Petitioners.

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

WHEREAS:

Respondent Commissioner of Labor (Commissioner) moves to dismiss the petition here on the grounds that it is untimely.

STATEMENT OF THE CASE

The Commissioner issued an Order to Comply with Labor Law Article 6 (Wage Order) and an Order under Article 19 (Penalty Order) (together, Orders) against Petitioners, Mark Finell, Mark Lamarti; and Craft Marketing, LLC (Petitioners) on January 15, 2010.¹

¹ The Wage Order finds that Petitioners failed to pay an employee wages earned or payable for the period November 1, 2008 through February 2, 2009 and directs that \$6,166.00 be paid to the Commissioner for the wages due, with \$867.63 continuing interest thereon at the rate of 16% calculated to the date of the Wage Order. The Commissioner also assessed a civil penalty of \$6,166.00 against Petitioners, for a total of \$13,199.63 due and owing. The single count of the Penalty Order finds that Petitioner violated Labor Law § 661 and 12 NYCRR Part 142-2.6 by failing to keep and/or furnish true and accurate employee payroll records for the period November 1, 2008 through February 28, 2009 and assesses a civil penalty of \$500.00.

The Board received Petitioner's petition for review of the Orders on April 9, 2010 in a FedEx Express Mail envelope dated ("accepted") April 7, 2010. The Board served the petition on the Commissioner, and this motion followed.

The Respondent's motion is brought pursuant to Board Rules of Procedure and Practice (Rules) 65.13 (d) (1) (iii) (12 NYCRR 65.13 [d] [1] [iii] which states that "[w]ithin thirty (30) days after the receipt of a Petition, [the Commissioner] may...move for an order dismissing the Petition where it appears that...the Petition fails to comply with the provisions of either Section 101 [of the Labor Law] or the board's Rules."

Labor Law § 101.1 provides, in relevant part, that "any person in interest...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." Following Rule 65.5, entitled "Filing and Docketing," the Rules note that "[t]ime periods prescribed by statute cannot be extended." Similarly, Rule 66.2 (a) states that "[r]eview may be had only by filing a written Petition with the Board ... no later than 60 days after the issuance of the ... order objected to." Finally, Rule 65.5 (c) provides that "[p]apers shall be deemed filed only upon receipt at the Board's office."

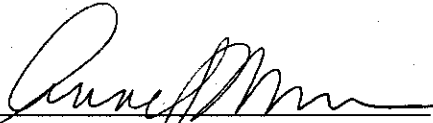
Respondent's motion to dismiss argues that Petitioners did not file their petition until April 9, 2010, or almost a month after the filing period and that the petition is therefore untimely.

Petitioners' time to file the petition ended on March 18, 2010, which is the 60th day after issuance of the Orders on January 15, 2010. The petition therefore is untimely unless otherwise excusable. Petitioners argue that Petitioner Mark Finell, who is responsible for Craft Marketing's finances and operations, was hospitalized as a result of head trauma for a month, returned to his office in early March but stated that he could not attend to most company business until the middle of April, 2010. Respondent argues that Petitioner Finell was one of three petitioners and that "[t]he choice of all three Petitioners to ignore the legal affairs of their business . . . is not the fault or responsibility of the Respondent or the Claimant."


The Board has excused petitioners from late filings in limited circumstances. See e.g., *Matter of Outstanding Transport*, PR 09-316 (May 26, 2010) (late filing excused where incorrect information regarding filing period was given to petitioner). The Board, however, may not excuse late filings due to the personal circumstances of petitioners (see, e.g., *Leo O'Brien and Leo O'Brien Racing Stable, LTD.*, PR 09-388 [May 26, 2010](funerals of family members and illness of Petitioner's spouse did not permit the Board to extend the filing date).

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition be, and the same hereby is, dismissed in accordance with Labor Law § 101 and the Board Rules of Procedure and Practice.



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 New York, New York, on
November 18, 2010.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition be, and the same hereby is, dismissed in accordance with Labor Law § 101 and the Board Rules of Procedure and Practice.

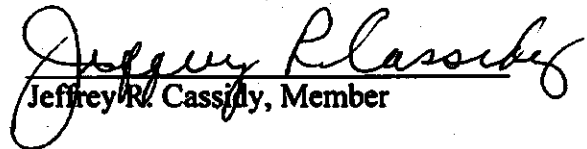
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