

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JAMES JAE KWON AND ACE WINE & LIQUOR :  
OF SHIRLEY, INC. (T/A ACE WINES & :  
LIQUORS), :

Petitioners, :

DOCKET NO. PR 10-246

To Review Under Section 101 of the Labor Law: An :  
Order to Comply with Labor Law Article 19 and an :  
Order under Article 19 of the Labor Law, both dated :  
May 20, 2010, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :  
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**APPEARANCES**

Jung & Associate PC, Hong K. Jung of Counsel, for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for Respondent.

**WHEREAS:**

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on July 26, 2010, in an envelope postmarked July 22, 2010. The petition was subsequently amended. The petition and amended petition were served on the respondent Commissioner of Labor (Commissioner) on September 15, 2010. The Commissioner moved on October 21, 2010 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued. The petitioners did not respond to the motion although we advised them in a letter dated October 26, 2010 that their response to the motion was to be filed on or before November 16, 2010 and then extended their time to respond, per their request, to January 28, 2011.

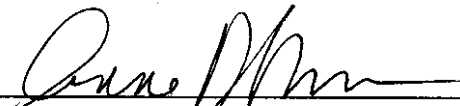
Labor Law § 101 (1) states that:

“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 order sought to be reviewed was issued on May 20, 2010, and therefore, any petition for review filed with the Board after July 19, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until July 26, 2010, and postmarked July 22, 2010, it was untimely. Having failed to respond to the Commissioner’s motion to dismiss, the petitioner has offered no 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, Chairperson

  
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J. Christopher Meagher, Member

  
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Jean Grumet, Member

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LaMarr J. Jackson, Member

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Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
September 9, 2011.

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LaMarr J. Jackson, Member

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Jeffrey R. Cassidy, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
at Rochester, New York, on  
September 9, 2011.

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Jeffrey R. Cassidy, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at Albany, New York, on  
September 9, 2011.