

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 DAVID SAVATTERI AND NYC PHOTOBOOTH, :
 INC., :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order Under Articles 6 and 19 of the Labor Law, :
 dated June 23, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 10-297

RESOLUTION OF DECISION

APPEARANCES

David Savatteri, *pro se*, for Petitioners.

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

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on September 24, 2010, which was subsequently amended. The petition and amended petition were served on the respondent Commissioner of Labor (Commissioner) on December 17, 2010. The Commissioner moved on January 21, 2011 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 February 25, 2011 that their response to the motion was to be filed on or before March 25, 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.”

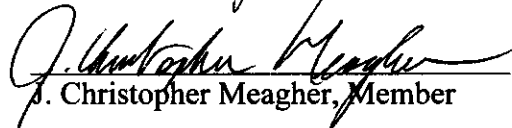
The order sought to be reviewed was issued on June 23, 2010, and therefore, any petition for review filed with the Board after August 23, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until September 24, 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.



Anne P. Stevason, Chairman



J. Christopher Meagher, Member



Jean Grunet, Member



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
June 7, 2011.