

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

JOHN DONOVAN AND LILIA SHEVCHUK (T/A
GREENLIGHT),

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 September 29, 2010,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 10-402

RESOLUTION OF DECISION

APPEARANCES

Lilia Shevchuk, petitioner pro se, and for John Donovan and Greenlight.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa Bates of counsel), for respondent.

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on December 20, 2010. The petition was served on the respondent Commissioner of Labor (Commissioner) on January 6, 2011. The Commissioner moved on February 3, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued.

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.”

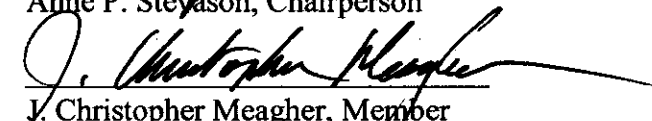
The orders sought to be reviewed were issued on September 29, 2010, and therefore, any petition for review filed with the Board after November 29, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until December 20, 2010, it was untimely. On November 30, 2011 the Board sent the parties a letter setting a briefing schedule for response to the motion. The petitioners failed to respond to the motion. Accordingly, the petition must be dismissed as untimely.

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, Chairperson



J. Christopher Meagher, Member

Jean Grumet, 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
January 30, 2012.

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Anne P. Stevason, Chairperson

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Jean Grunet, Member



LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
January 30, 2012.