

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

SHIMON ABRAHAMI AND NEDIVA
SCHWARTZ AND SHABBAT LLC,

Petitioners,

DOCKET NO. PR 11-013

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 October 15, 2010,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Yoni Friedman, *pro se*, and Alan Goodman, CPA, for Petitioners.

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

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on January 18, 2011 in an envelope post-marked January 12. The petition was subsequently amended. The petition and amended petition were served on the respondent Commissioner of Labor (Commissioner) on March 17, 2011. The Commissioner moved on April 18, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the orders were issued. The petitioners did not respond to the motion although we advised them in a letter dated March 17, 2011 that their response to the motion was to be filed on or before June 21, 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.”

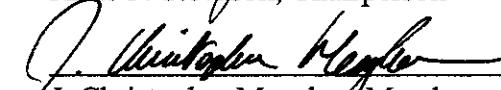
The orders sought to be reviewed were issued on October 15, 2010, and therefore, any petition for review filed with the Board after December 14, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until January 18, 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, 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
September 9, 2011.

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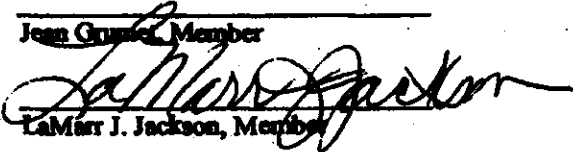
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Jeffrey R. Cassidy, Member

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

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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
September 9, 2011.