

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MICHAEL BERGOLD (T/A HARBORS ASSET
CONSTRUCTION),

Petitioner,

DOCKET NO. PR 11-170

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,
each dated April 7, 2011,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Michael Bergold, petitioner pro se.

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

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on June 9, 2011 by letter postmarked June 7, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on June 28, 2011. The Commissioner moved on July 21, 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 April 7, 2011, and therefore, any petition for review filed with the Board after June 6, 2011 would be untimely (Board Rules of Procedure and Practice 66.3 [a], 65.5 and 65.3 [a]; [12 NYCRR 66.3 [a], 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until June 9, 2011, in an envelope post-marked June 7, 2011, it was untimely.

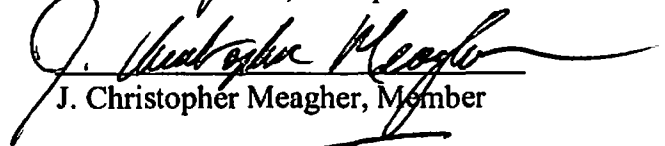
The petitioner did not file any opposition to the motion.

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.



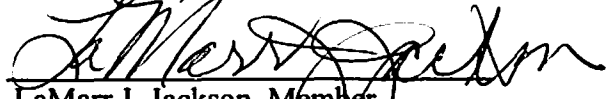
Anne P. Stefason, Chairperson



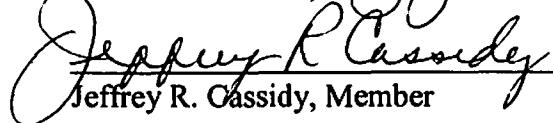
J. Christopher Meagher, Member



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
July 16, 2012.