

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

JOSEPH NAPOLITANO AND NAPOLITANO
BROTHERS, INC. (T/A THE EATERY ON
NORTH) ALSO (T/A THE AVENUE DELI CAFÉ),

Petitioners,

DOCKET NO. PR 11-282

To Review Under Section 101 of the Labor Law: An
Order to Comply With Article 19 of the Labor Law
and an Order Under Article 19 of the Labor Law,
both dated April 28, 2011,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Joseph Napolitano, petitioner pro se, and for Napolitano Brothers, Inc. (T/A The Eatery on North) also (T/A The Avenue Deli Café), for petitioners,

Pico Ben-Amotz, Acting 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 August 30, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on September 29, 2011. The Commissioner moved on November 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 April 28, 2011, and therefore, any petition for review filed with the Board after June 27, 2011 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 August 30, 2011, it was untimely. On November 8, 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:

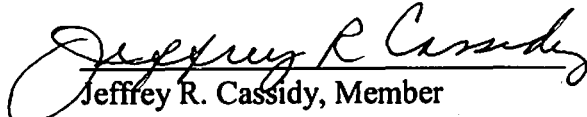
The Commissioner of Labor’s motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.


Arne 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
March 29, 2012.