

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

DONALD V. PEARCE (T/A AFFORDABLE
HOME IMPROVEMENT),

Petitioner,

To Review Under Section 101 of the Labor Law:
Two Orders to Comply With Article 6 of the Labor
Law and an Order Under Article 19 of the Labor
Law, each dated August 23, 2011,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 11-387

RESOLUTION OF DECISION

APPEARANCES

Donald V. Pearce, petitioner pro se.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Benjamin T. Garry of
counsel), for the respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the
Industrial Board of Appeals (Board) on December 21, 2011. The petition was served on the
respondent Commissioner of Labor (Commissioner) on January 17, 2012. The
Commissioner moved on February 21, 2012 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:

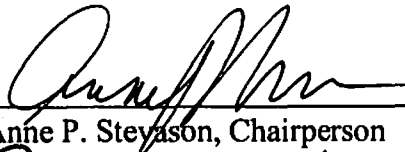
“Except where otherwise prescribed by law, any person in interest or
his duly authorized agent may petition the board for a review of the
validity or reasonableness of any . . . order made by the
commissioner. . . . Such petition shall be filed with the board no
later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on August 23, 2011, and therefore, any petition for review filed with the Board after October 24, 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 December 21, 2011, in an envelope post-marked December 19, it was untimely.

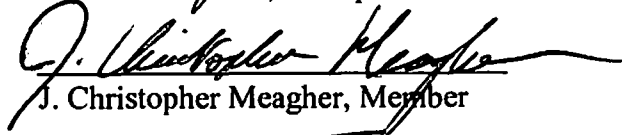
The petitioner's opposition to the motion provides no legally sufficient grounds for the Board to find that the petition was timely filed or to excuse the late filing.

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.



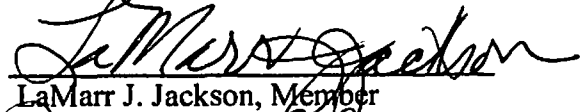
Anne P. Steyason, Chairperson



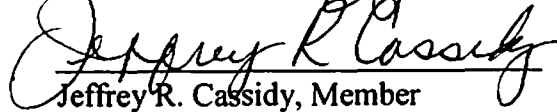
J. Christopher Meagher, Member



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.