

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ALDO MOSQUERA AND H.A.B. INC. (T/A HOME
BOYS AUTO BOUTIQUE),

Petitioners,

DOCKET NO. PR 12-031

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 August 2, 2011,

INTERIM
RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Aldo R. Mosquera, petitioner pro se.

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

WHEREAS:

The above proceeding was commenced on February 9, 2012, when the Board received a petition to review orders issued by the respondent against Aldo Mosquera and H.A.B., Inc. on August 2, 2011. The petition was subsequently amended on March 9, 2012, and the petition and amended petition were served on the respondent thereafter on May 21, 2012. The respondent moved on June 11, 2012 to dismiss the petition as untimely since it was filed more than 60 days after the orders were issued (*see* Labor Law § 101 [1]). Petitioners replied that service was defective and therefore the petition should be accepted as timely.

Labor Law § 101 (1) provides that a petition to review an order of the Commissioner of Labor must be filed within 60 days of the date the order was issued. There is no dispute that the petition was filed more than 60 days after the orders were issued. An affidavit of service indicates that one copy of the orders was sent by mail to:

Attn: Aldo R. Mosquera
Home Boys Auto Boutique
97-08 150th St
Jamaica NY 11435

A second affidavit of service shows that an additional copy of the orders was sent by mail to Aldo R. Mosquera at a residence within the state of New York. The petitioners deny receipt of the orders at their business address in Jamaica, New York¹. Petitioner Mosquera further alleges that he has not lived at the residence the respondent also mailed the orders to since 2001. The respondent affirms that the envelopes containing the orders were not returned by the post office as undeliverable.

We have repeatedly held that Labor Law § 33 allows the Commissioner to serve orders on individuals by mail only at their last known place of business (*Matter of Angelo A. Gambino et al.*, PR 10-150 [interim decision, November 18, 2010]; *Matter of Pjeter Vulaj et al.*, PR 11-034 [interim decision, October 11, 2011]; *Matter of Jacinto Abreu et al.*, PR 10-356 [interim decision, June 7, 2011]). Mailing the orders to an individual at their residence is not permitted by the statute. In this case, the Commissioner mailed one copy of the orders to the last known business address, which the petitioners do not dispute is their last known business address, and an additional copy to the individual petitioner at his residence. Service by mail at the residence was not proper service under the Labor Law. With respect to service by mail at the last known business address, the petitioners argue this was not sufficient because only one copy was mailed to two parties – Mosquera and H.A.B., Inc. -- sharing the same address. We agree that this was improper service. While Labor Law § 33 does not explicitly state that more than one copy of an order needs to be sent to an individual when he is named as an individual and also being served as the agent of a corporation, we hold that proper service requires each individual and entity named in an order to be served with a copy of such order (*see e.g. Raschel v Rish*, 69 NY2d 694 [1986]; *McCormack v Gomez*, 137 AD2d 504 [2d Dept 1988]). This is particularly true where, as here, the manner in which the envelope containing the orders was addressed is not clear as to whether the individual or the corporation was the intended recipient. In the absence of proper service of the orders, the limitations period did not begin to run, and the petition is timely filed with the Board. We find that the petition filed with the Board here is timely and that the Board’s review proceedings have been commenced.

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¹ Denial of receipt of order is insufficient to overcome the presumption of mailing and receipt, given evidence of mailing (*Matter of Jeffrey H. Astor et al.*, PR 08-056 to deny [March 24, 2010]).

NOW THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent Commissioner of Labor's motion to dismiss the petition be, and hereby is, denied; and
2. Respondent Commissioner of Labor be, and hereby is, required to answer the petition within 35 days of the service of this Interim Resolution of Decision upon him.



Anne P. Stevason, Chairperson



J. Christopher Meagher, Member



Jean Grumet, Member

LaMarr J. Jackson, Member

ABSENT

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
September 10, 2012.

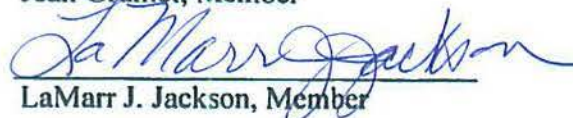
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Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grinet, 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
September 10, 2012.