

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

EDWIN ERNESTO AVILA AND ROBERTO  
ROSAS AND SOGNO RESTAURANT CORP. (T/A  
THE CITY TAVERN),

Petitioners,

DOCKET NO. PR 12-056

To Review Under Section 101 of the Labor Law: An  
Order to Comply with Article 19, an Order to  
Comply with Article 6 and an Order under Articles 6  
and 19 of the Labor Law, all dated September 20,  
2011,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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**APPEARANCES**

Eugene Lyle Stoler, Esq., for petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Jeffrey G. Shapiro of  
counsel), for respondent.

**WHEREAS:**

This proceeding was commenced when the petitioners filed a petition with the  
Industrial Board of Appeals (Board) on February 16, 2012. The petition was served on the  
respondent Commissioner of Labor (Commissioner) on May 10, 2012. The Commissioner  
moved on May 17, 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 order sought to be reviewed was issued on September 20, 2011, and therefore, any petition for review filed with the Board after November 21, 2011, would be untimely (60 days from September 20 would be November 19, a Saturday and by application of Board Rule 65.3(a) the petition should have been filed by that Monday, November 21). As the petition in this proceeding was not received by the Board until February 16, 2012, in an envelope post-marked February 13, it was untimely.

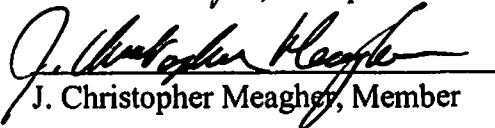
The petitioners' opposition to the motion concedes that the petition was untimely but claims that the petitioners relied upon their "professional advisors to act in a timely and responsive manner in their behalf." Petitioners further claim that their legal counsel had met with them in December 2010 when they were under examination by the Department of Labor and "...had not heard from them since that meeting until February of 2012 at which time their accountant contacted the attorney and forwarded the Order which was entered on September 20, 2011." At that point the attorney "notified the accountant that the statutory period within which to file a Petition had expired, and then after a meeting with the petitioners a Petition was immediately prepared and forwarded to the Industrial Board of Appeals." Unfortunately for the petitioners, by their own admission, they acknowledge that they failed to file a timely appeal of the Order of September 20, 2011.

The petitioners' failure to act and their accountant's failure to act, to the extent that they were relying on him, provide no legally sufficient grounds to excuse the late filing. The Order clearly stated the time frame within which to file an appeal and if the petitioners were going to rely on their accountant or any other "professional" to act on their behalf, they should have been prepared to make sure that such action was taken in a timely fashion. Petitioners did not need a "professional" to file a timely appeal of the Order, they could have done it themselves.

**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.

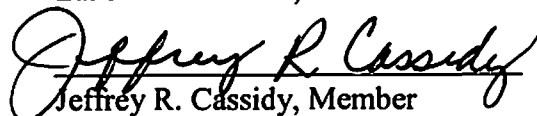
  
Anne P. Stevason, Chairperson

  
J. Christopher Meagher, Member

  
Jean Grumet, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
February 6, 2013.

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LaMarr J. Jackson, Member

  
Jeffrey R. Cassidy, Member

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Anne P. Stevason, Chairperson

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J. Christopher Meagher, Member

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Jean Grumet, Member

  
 LaMarr J. Jackson, Member

Dated and signed by a Member  
 of the Industrial Board of Appeals  
 at Rochester, New York, on  
 February 6, 2013.

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Jeffrey R. Cassidy, Member