

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

GARY SMITH AND TROPICAL ASSOCIATES, :
INC, :

Petitioners, :

DOCKET NO. PR 12-130

To Review Under Section 101 of the Labor Law: :
Orders to Comply with Articles 6 and 19 of the Labor :
Law dated September 24, 2010, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :

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APPEARANCES

Gary Smith, petitioner pro se.

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

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on July 30, 2012. The petition was served on the respondent Commissioner of Labor (Commissioner) on August 2, 2012. The Commissioner moved on September 6, 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 September 24, 2010, and therefore any petition for review filed with the Board after November 23, 2010, 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 July 30, 2012, it was untimely.

The petition was filed after petitioner received a Notice of Judgment dated July 12, 2012, and no mention was made in the petition of not receiving the Order to Comply on or about September 24, 2010. Petitioner was given notice of respondent's motion and did not file any opposition to the motion thereby providing no legally sufficient grounds for the Board to find either 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.

Absent

Anne P. Stevason, Chairperson

J. Christopher Meagher

J. Christopher Meagher, Member

Jean Grumet

Jean Grumet, Member

LaMarr J. Jackson

LaMarr J. Jackson, Member

Jeffrey R. Cassidy

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
December 14, 2012.