

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
: :
TRACY L. SPINUZZA AND PINO'S PIZZERIA :
AND RESTAURANT, INC., :
: :
Petitioners, :
: :
To Review Under Section 101 of the Labor Law: :
An Order to Comply With Article 19 of the Labor :
Law, dated May 4, 2012, :
: :
- against - :
: :
THE COMMISSIONER OF LABOR, :
: :
Respondent. :
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DOCKET NO. PR 12-138

RESOLUTION OF DECISION

APPEARANCES

James T. Rindfleisch, for petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Michael Paglialonga of counsel), for the respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on August 15, 2012. The petition was served on the respondent Commissioner of Labor (Commissioner) on August 31, 2012. The Commissioner moved on October 3, 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 May 4, 2012, and therefore, any petition for review filed with the Board after July 3, 2012 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 August 15, 2012, in an envelope post-marked July 26, 2012, it was untimely.

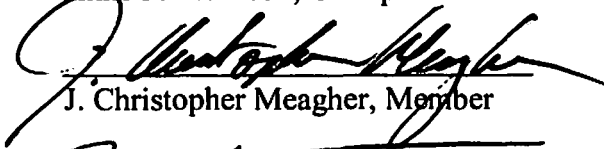
The petitioner did not file an opposition to the motion.

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.



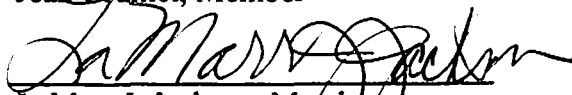
Anne P. Stevason, Chairperson



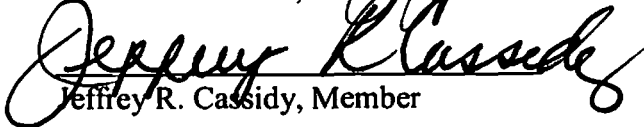
J. Christopher Meagher, Member



Jean Gragnet, 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 25, 2013.