

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:	
	:	
JEANETTE DE DELYRA A/K/A JEAN DE LYRA	:	
EHRLICH AND DAN EHRLICH AND ALICE'S	:	
OF OYSTER BAY, INC.,	:	
	:	DOCKET NO. PR 13-198
Petitioners,	:	<u>RESOLUTION OF DECISION</u>
	:	
To Review Under Section 101 of the Labor Law:	:	
An Order to Comply with Article 6 of the Labor Law	:	
and An Order Under Article 19 of the Labor Law,	:	
both dated September 19, 2013,	:	
	:	
- against -	:	
	:	
THE COMMISSIONER OF LABOR,	:	
	:	
Respondent.	:	

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APPEARANCES

Jean de Lyra Ehrlich, petitioner *pro se*, and for Dan Ehrlich and Alices's of Oyster Bay, Inc.

Pico Ben-Amotz, General 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 December 12, 2013, which was mailed in an envelope post-marked December 10, 2013. The petition and an amended petition were served on the respondent Commissioner of Labor (Commissioner) on February 24, 2014. The Commissioner moved on March 31, 2014, 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:

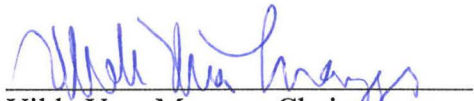
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner. . . . Such petition shall be filed with the board no later than sixty days after the issuance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

The orders sought to be reviewed were issued on September 19, 2013, and therefore, any petition for review filed with the Board after November 18, 2013, would be untimely (Board Rules of Procedure and Practice 65.3 [a] and 65.5 [c] and [d] [12 NYCRR 65.3 [a] and 65.5 [c] and [d]). As the petition in this proceeding was not received by the Board until December 12, 2013, in an envelope post-marked December 10, 2013, it was untimely.

The petitioners did not file any opposition to the motion.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

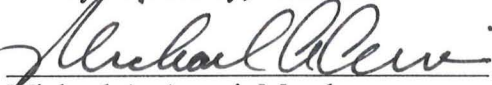
The Commissioner of Labor's motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.


Vilda Vera Mayuga, Chairperson


J. Christopher Meagher, Member


LaMarr J. Jackson, Member

Absent
Jeffrey R. Cassidy, Member


Michael A. Arcuri, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
July 1, 2014.