

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 KENNY DENG FENG CHAN, :
 :
 Petitioner, :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order to Comply with Article 19 and an Order :
 Under Articles 6 and 19 of the Labor Law, both dated :
 January 10, 2014, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 14-085

INTERIM
RESOLUTION OF DECISION

APPEARANCES

Lawler Mahon & Rooney LLP (Roger Mahon and James J. Mahon of counsel), for the petitioner.

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

WHEREAS:

The above proceeding was commenced on April 25, 2014, when the Board received a petition to review orders issued by the respondent against petitioner Kenny Deng Feng Chan and Sin-Tung Chan and Wan Xing Long Inc. (T/A Maple Supermarket) on January 10, 2014. Sin-Tung Chan and Wan Xing Long Inc. filed a separate petition challenging the orders which has been assigned Docket No. PR 14-072. The respondent moved on June 4, 2014 to dismiss the petition as untimely since it was filed more than 60 days after the orders were issued (*see* Labor Law § 101 [1]). There is no dispute that the petition was filed more than 60 days after the orders were issued, but the petitioner contends that service was defective and therefore the petition must be accepted as timely.

Labor Law § 101 (1) provides that a petition for review of orders issued by the respondent Commissioner of Labor must be filed within 60 days of the date the orders were issued. The affidavit of service provided by the respondent indicates that the orders were mailed to the petitioner at a residential address in Little Neck, New York, and to Maple Supermarket in Flushing, New York. With respect to service on the petitioner at a residential address, such service was defective. We have repeatedly held that serving orders on an individual by mail to a

residence is not permitted by Labor Law § 33 (see e.g. *Matter of Angelo A. Gambino et al.*, PR 10-150 [interim decision, November 18, 2010]). However, under Labor Law § 33, the respondent is permitted to serve orders by mail to individuals at their last known place of business so long as the mailing is reasonably calculated to give notice (*Gambino, supra*). Petitioner argues that Maple Supermarket could not have been the petitioner’s last known place of business, because it closed in 2009, prior to issuance of the orders, as shown by New York Department of State records attached to the petition. Petitioner also argues that Department of State records for a different corporation show a different last known business address for the petitioner.

We agree that service on the petitioner by mail at the Maple Supermarket address was not proper service because it was not reasonably calculated to give notice of the orders to the individual petitioner (*Bossuk v Steinberg*, 58 NY2d 916, 919 [1983]; *Fashion Page, Ltd. v Zurich Ins. Co.*, 50 NY2d 265, 272 [1980]; *Gambino, supra*). A simple search of the Department of State’s online database would have shown that the corporation trading as Maple Supermarket was dissolved in 2009, and that orders sent to the petitioner there almost five years later would therefore be unlikely to reach their intended recipient. In the absence of proper service of the orders on the petitioner, the limitations period did not begin to run, and the petition is deemed timely filed with the Board. We find that the petition is timely and the Board’s review proceedings have been commenced.

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 service of this Interim Resolution of Service upon him.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMar J. Jackson, Member



Michael A. Arcuri, Member



Frances P. Abriola, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
August 7, 2014.