

MAGALIE SEPTIMUS AND SAINTILUS DAY CARE INC.

Docket No. PR 09-332

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MAGALIE SEPTIMUS and SAINTILUS DAY
CARE INC.,

Petitioners,

DOCKET NO. PR 09-332

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 June 26, 2009,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Magalie Septimus, *pro se*, for Petitioners.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Wasyl of counsel, for
Respondent, Commissioner of Labor.

WHEREAS:

Petitioners filed a petition with the Industrial Board of Appeals (Board) on
November 10, 2009, seeking review of orders that Respondent Commissioner of Labor
(Respondent) issued on June 26, 2009.

The petition was served on Respondent on December 8, 2009. Respondent moved
on December 18, 2009 to dismiss the petition as untimely. Petitioners did not respond to the
motion.

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.”

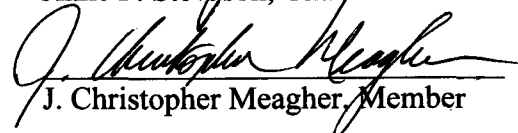
The Board’s Rules of Procedure and Practice (Rules) § 66.2 (a) (12 NYCRR 66.2 [a]) provide that review of an order “may be had only by filing a written Petition with the Board . . . no later than 60 days after” the order’s issuance, and Rule § 65.5(d) (12 NYCRR 65.5 [d]) permits a petition that is “post-marked within the time [for filing] provided” by the Rules to be found timely.

The orders sought to be reviewed were issued on June 26, 2009, and therefore, a petition for review would be timely if filed with the Board no later than August 25, 2009. The Board received the petition in this proceeding enclosed in an envelope that was postmarked November 10, 2009. The petition was therefore untimely, and Petitioners, having failed to respond to Respondent’s motion to dismiss, have not offered any grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

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.

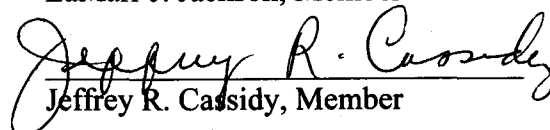


Anne P. Stevason, Chairman

J. Christopher Meagher, Member

Jean Grumet, 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
June 23, 2010.

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