

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

YEVGENY PANCHENKO A/K/A GENE  
PANCHENKO AND RHINO CONSTRUCTION  
NYC, INC. (T/A RHINO CONSTRUCTION),

Petitioners,

DOCKET NO. PR 15-274

To Review Under Section 101 of the Labor Law:  
An Order To Comply With Article 19 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, each dated July 1, 2015,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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**APPEARANCES**

Yevgeny Panchenko, petitioner pro se, and for Rhino Construction NYC, Inc. (T/A Rhino Construction).

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

**WHEREAS:**

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 8, 2015 in an envelope post-marked September 3, 2015. As requested by the Board, petitioners filed an amended petition on November 25, 2015. The Board served the amended petition on respondent Commissioner of Labor on December 2, 2015 and on December 31, 2005, respondent moved to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners did not reply to the motion.

Labor Law § 101 (1) provides 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 July 1, 2015; therefore, any petition for review filed with the Board with a post-mark after August 31, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)] and 65.3 [a] [12 NYCRR 65.3 (a)] [if last day of the period falls on a legal holiday, Saturday, or Sunday, the period runs until the end of the next day that is not a legal holiday, Saturday, or Sunday]) and must be dismissed. As the petition in this proceeding was post-marked after August 31, 2015, it was filed late and must be dismissed.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

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



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

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Michael A. Arcuri, Member

Dated and signed by the Members  
of the Industrial Board of Appeals  
at New York, New York  
on March 2, 2016.

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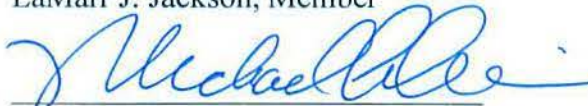
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Dated and signed in the Office  
of the Industrial Board of Appeals  
at Albany, New York, on  
March 2, 2016.