

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ZULEYHA AKCAY A/K/A JULIE AKCAY AND
BANCO BUILDING LLC (T/A ARCADE
DEPARTMENT STORE),

Petitioners,

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 July 23, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-297

RESOLUTION OF DECISION

APPEARANCES

Kevin J. Keating, Esq., for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 23, 2015, in an envelope post-marked September 22. The Board served the petition on respondent Commissioner of Labor on September 30, 2015. Respondent moved on October 21, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners' attorney contends in his response to the motion that we should accept the petition because a clerical error by his office caused the petition to be filed one day late.


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 23, 2015, and therefore, any petition for review filed with the Board with a post-mark after September 21, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] and 65.3 [a] [12 NYCRR 65.5 (d) and 65.3 (a)]). There is no dispute that the petition was filed one day late, nor have petitioners alleged service of the orders was defective. Because failure to file a petition within 60 days of issuance of the orders is a “fatal defect” (*Matter of Budget Tire Automotive, Inc. v O’Dell*, 223 AD2d 988, 989 [3d Dept 1996]), and law office failure cannot excuse petitioners’ failure to comply with the 60-day statute of limitations (*Galanos v City of New York*, 35 AD2d 829 [2d Dept 1970]; *Matter of Econopouly*, PR 13-180 [January 20, 2016] [petition granted where law office failure did not excuse respondent’s late filing of a pleading]), 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, and the petition for review be, and the same hereby is, dismissed.



Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at Albany, New York
on April 13, 2016.