STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

BERNADETTE RICHARDS AND SOPHIE’S HEALTH CARE SERVICES, INC.,

Petitioners,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Articles 6 and 19 of the Labor Law, dated September 20, 2018,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 21-087

RESOLUTION OF DECISION

APPEARANCES

Sophia Richards Smith, for petitioners.

Jill Archambault, Acting General Counsel, NYS Department of Labor, Albany (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (hereinafter “Board”) on June 29, 2021, and on July 13, 2021, the Board served the petition on respondent Commissioner of Labor. Respondent moved, on August 12, 2021, to dismiss the petition because it was filed more than 60 days after the order being appealed was issued. Petitioners did not respond 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.”

It is undisputed that the petition for review was untimely filed. Petitioners, however, request that the Board accept the late filing because petitioners were unable to timely respond to
the wage order due to numerous flooding incidents that displaced petitioners' offices resulting in the loss of the order itself.

The order provided clear and unambiguous instructions to the recipient as to how the orders may be appealed. Petitioners assert that the untimely filing was caused by flooding and their office being displaced; however, petitioners did not present any documents or other corroborating statements to support their otherwise general and non-specific assertions. The failure to file a petition within 60 days of issuance of the order is a "fatal defect" and may not be extended by the Board (Matter of Budget Tire Automotive, Inc. v O'Dell, 223 AD2d 988, 989 [3d Dept 1996]; Matter of May Street Restaurant, Docket No. PR 17-083, at p. 2 [Jan. 23, 2018] The order sought to be reviewed was issued on September 20, 2018, therefore, any petition for review filed with the Board after November 19, 2018, is untimely (Board Rules [12 NYCRR §§ 65.5 and 65.3 [a]). As the petition in this proceeding was filed after November 19, 2018, and petitioners provided no legally sufficient reason to excuse their late filing, we find that the petition was untimely 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.

Dated and signed by the Members of the Industrial Board of Appeals on September 29, 2021.

Molly Doherty, Chairperson

Najah Farley, Member

Sandra Abeles, Member

1 The order to be appealed, as attached to the petition, contains, in relevant part, the following language: "* If you are aggrieved by this Order*, you may appeal within 60 days from the date issued to the Industrial Board of Appeals as provided by Section 101 of the Labor Law."