STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

ANDREW ZURICA AND AZTP HOLDINGS, LLC T/A ANDREW’S CLASSIC BROOKLYN BAGELS,

Petitioners, DOCKET NO. PR 21-089

To Review Under Section 101 of the Labor Law:

An Order to Comply with Articles 6 and 19 of the Labor Law, dated April 29, 2021,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

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APPEARANCES

Andrew Zurica, petitioner pro se and for AZTP Holdings, LLC.

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

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (hereinafter “Board”) on June 30, 2021, and on July 13, 2021, the Board served the petition on respondent Commissioner of Labor. Respondent moved, on August 5, 2021, to dismiss the petition because it was filed more than 60 days after the order being appealed was issued. Petitioners were to respond to the motion on or before September 10, 2021, which they did not do. On September 23 and October 12, 2021, petitioners sent correspondence to the Board asserting that they had not been receiving correspondence from the Board. Thus, the Board sent a letter via the email address that petitioners provided and the mailing address that petitioners provided notifying petitioners that they had until October 28, 2021, to respond to the motion to dismiss filed by respondent. Petitioners did not submit any response.

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 order to be reviewed was issued on April 29, 2021, and therefore, any petition for review filed with the Board after June 28, 2021, is untimely (Labor Law § 101 (1); Board Rules of Procedure and Practice (hereinafter “Board Rules”) [12 NYCRR] § 65.3 [a]). As the petition in this proceeding was filed more than 60 days after the statutory deadline to file it, and petitioners offered no reason to excuse the 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 February 9, 2022.

Molly Doherty, Chairperson
Najah Farley, Member
Sandra Abeles, Member