STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

ABDUL M MOHAMMED AND SMOKE BUDDYS
SMOKE SHOP LLC,

Petitioners,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Articles 6 and 19 of the Labor Law, dated October 28, 2021,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 22-005

RESOLUTION OF DECISION

APPEARANCES

Ivan Connel, Elmira, for petitioners.

Jill Archambault, 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 January 5, 2022, in an envelope with a post mark of January 3, 2022, seeking review of an order to comply (hereinafter “order”) dated October 28, 2021. On January 24, 2022, the Board served the petition on respondent Commissioner of Labor. Respondent moved, on February 22, 2022, to dismiss the petition because it was filed more than 60 days after the order being appealed was issued. On February 24, 2022, the Board notified the parties that petitioners’ opposition to respondent’s motion, if any, must be filed by March 24, 2022. Petitioners did not file a response 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 order to be reviewed was issued on October 28, 2021, and therefore, any petition for review filed with the Board after December 27, 2021, is untimely (Labor Law § 101 (1); Board Rules of Procedure and Practice (hereinafter “Board Rules”) [12 NYCRR] § 65.19 (former Board Rules § 66.2 [a]) and Board Rules (12 NYCRR) § 65.10 (former Board Rules § 65.3 [a])). As the petition in this proceeding was filed after the statutory deadline and petitioners have 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 May 18, 2022.

Molly Doherty, Chairperson

Najah Farley, Member

ABSENT

Sandra Abeles, Member

1 The Board Rules were amended on March 30, 2022.