

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :  
 :  
 PATRICIA TOWLE AND TATRA FARM LLC AND :  
 TATRA FARM OPERATING CORP., :  
 :  
 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-A of the Labor Law, :  
 both dated April 8, 2010, :  
 :  
 - against - :  
 :  
 THE COMMISSIONER OF LABOR, :  
 :  
 Respondent. :  
 -----X

DOCKET NO. PR 14-329

INTERIM  
RESOLUTION OF DECISION

**APPEARANCES**

William Grace Crane, Esq., for petitioners.

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

**WHEREAS:**

The above proceeding was commenced on December 18, 2014, when the Board received a petition to review orders issued by the respondent against petitioners on April 8, 2010. The petition was served on respondent on January 9, 2015. Respondent moved on February 12, 2015, to dismiss the petition as untimely since it was filed more than 60 days after the orders were issued (*see* Labor Law § 101 [1]). Petitioners replied that the orders were never served on petitioners.

Labor Law § 101 (1) provides that a petition to review an order of the Commissioner of Labor must be filed within 60 days of the date the order was issued. There is no dispute that the petition was filed more than 60 days after the orders were issued. An affidavit of service indicates that one copy of the orders was sent by mail to:

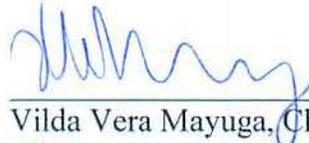
Attn: Patricia Towle  
 Tatra Farm LLC  
 298 Schultsville Rd  
 Clinton Corners NY 12514

Counsel for respondent affirms that the envelopes containing the orders were not returned by the post office as undeliverable.

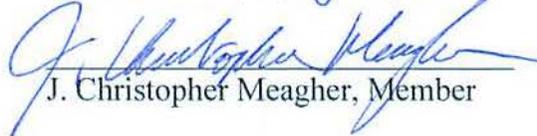
Service was defective. In *Matter of Mosquera et al.* PR 12-031 (Interim decision, September 10, 2012), we held that “proper service requires each individual and entity named in an order to be served with a copy of such order” (*citing Raschel v Rish*, 69 NY2d 694 [1986]; *McCormack v Gomez*, 137 AD2d 504 [2d Dept 1988]). Because one copy of the orders was mailed in the same envelope addressed to multiple parties, service was defective, and the limitations period did not begin to run. We deem the petition is timely filed with the Board, and that the Board’s review proceedings have been commenced.

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

1. Respondent Commissioner of Labor’s motion to dismiss the petition be, and hereby is, denied; and
2. Respondent Commissioner of Labor be, and hereby is, required to answer the petition within 30 days of the service of this Interim Resolution of Decision upon him.

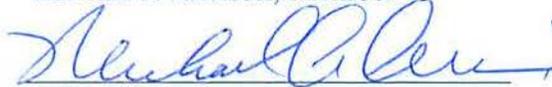


Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member



Frances P. Abriola, Member

Dated and signed in the Office  
 of the Industrial Board of Appeals  
 at Albany, New York, on  
 April 29, 2015.

Attn: Patricia Towle  
Tatra Farm LLC  
298 Schultzville Rd  
Clinton Corners NY 12514

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Vilda Vera Mayuga, Chairperson

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J. Christopher Meagher, Member

  
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LaMarr J. Jackson, Member

Dated and signed by a Member  
of the Industrial Board of Appeals  
at Buffalo, New York, on  
April 29, 2015.

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Michael A. Arcuri, Member

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Frances P. Abriola, Member