

Decided and Entered: April 22, 2010

508415

In the Matter of the Claim of
HECTOR LOPEZ,
Respondent,

v

MEMORANDUM AND ORDER

395 BROOK REALTY CORPORATION,
Appellant.

WORKERS' COMPENSATION BOARD, (AFFIRMED)
Respondent.

Calendar Date: March 22, 2010

Before: Cardona, P.J., Mercure, Spain, Kavanagh and Garry, JJ.

Max Markus Katz, P.C., New York City (Anil K. Prabhu of
counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York City (Steven
Segall of counsel), for Workers' Compensation Board, respondent.

Kavanagh, J.

Appeal from a decision of the Workers' Compensation Board,
filed March 3, 2009, which ruled that the application of 395
Brook Realty Corporation for review of a Workers' Compensation
Law Judge's decision was untimely.

Claimant sought workers' compensation benefits alleging
that he was injured during the course of his employment with
David Damashi, the owner of 395 Brook Realty Corporation. In a
decision filed September 8, 2008, a Workers' Compensation Law
Judge (hereinafter WCLJ) decided, among other things, that an

employer-employee relationship existed between claimant and Brook Realty and awarded benefits to claimant. Two months later, Brook Realty subsequently submitted an application for review of this decision with the Workers' Compensation Board. The Board denied the application as untimely, prompting this appeal.

A party seeking review of a WCLJ's decision is required to file an application for review with the Board within 30 days of the filing of the decision (see Workers' Compensation Law § 23; Matter of Toner v Michael Hanley Moving & Stor., 40 AD3d 1199, 1200 [2007], lv denied 9 NY3d 808 [2007]; Matter of Backus v Wesley Health Care Ctr., Inc., 26 AD3d 664, 665 [2006]). Accordingly, Brook Realty's application for review, filed almost two months after the WCLJ's decision, was untimely. Further, "[t]he Board has wide discretion to accept or reject untimely applications for review and we will not disturb such a determination absent an abuse of that discretion" (Matter of Doner v Nassau County Police Dept., 24 AD3d 978, 979 [2005]; see Matter of Hyland v Matarese, 56 AD3d 841, 843 [2008]; Matter of Wilkinson v Bendix Friction Corp., 32 AD3d 636, 637 [2006]). Here, as the Board noted, Brook Realty failed to acknowledge at the time of the filing that the application was untimely or offer any explanation as to why the application could not have been timely filed. Under these circumstances, the Board's denial of the application for review as untimely was not an abuse of its discretion (see Matter of Salatti v Crucible Materials Corp., 134 AD3d 1145, 1146 [2006]; Matter of Doner v Nassau County Police Dept., 24 AD3d at 979; Matter of Brown v American Ballet Theatre, 13 AD3d 797, 798 [2004]).

Cardona, P.J., Mercure, Spain and Garry, JJ., concur.

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ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court