

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28551
W/ct

_____AD3d_____

Argued - September 10, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-08620

DECISION & JUDGMENT

In the Matter of N. Picco and Sons Contracting, Inc.,
et al., petitioners, v M. Patricia Smith, etc., respondent.

(Docket No. 08620/09)

Hollander & Strauss, LLP, Great Neck, N.Y. (Michael R. Strauss of counsel), for
petitioners.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Donya Fernandez of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 and Labor Law § 220(8) to review a
determination and order of the Acting Commissioner of the New York State Department of Labor
dated August 11, 2009, which adopted the findings of fact, conclusions of law, and recommendations
of a hearing officer, made after a hearing, inter alia, that the petitioner N. Picco and Sons Contracting,
Inc., willfully failed to pay certain employees prevailing wages and supplements on four public works
projects.

ADJUDGED that the proceeding is dismissed, with costs.

The petitioners commenced the instant proceeding more than 30 days after service
upon them of the notice of the filing of the challenged determination and order in the office of the
fiscal officer of the appropriate governmental entity, here, the Office of the Commissioner of the New
York State Department of Labor. Under such circumstances, the proceeding is time-barred (*see*
Labor Law § 220[8]; *Matter of Local 237, Int. Bhd. of Teamsters v Comptroller of City of N.Y.*, 259

October 5, 2010

Page 1.

MATTER OF N. PICCO & SONS CONTRACTING, INC. v SMITH

AD2d 314, 314; *Bolovis v Polis Contr. Corp.*, 235 AD2d 323, 323; cf. CPLR 217[1]; *Matter of Edmead v McGuire*, 67 NY2d 714, 716; *Matter of Lion Constr. Corp. v New York State Dept. of Labor*, 266 AD2d 394, 394-395), and must be dismissed.

In light of the foregoing, we need not reach the merits of the petitioners' contentions.

MASTRO, J.P., SANTUCCI, ROMAN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court