STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

A P West Coast, Inc.   Case No. **13-0035-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor A P West Coast, Inc. aka Adolfson & Peterson Construction, a subsidiary of Adolfson & Peterson, Inc. (A P West) submitted a Request for Review of the Civil Wage and Penalty Assessment (Assessment) served by Division of Labor Standards Enforcement (DLSE) on November 1, 2012. The appointed Hearing Officer, Harold L. Jackson, served on April 12, 2013, an Order to Show Cause (OSC) why the Request for Review should not be dismissed as untimely under Labor Code section 1742, subdivision (a),[1] which requires that a request for review be transmitted to the Labor Commissioner within 60 days after service of the Assessment. A P West did not submit a written response. For the reasons stated below, I find that the time limit is mandatory and jurisdictional. Accordingly, the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against A P West on November 1, 2012, arising out of work performed by a subcontractor of A P West, Grapevine Construction, Inc., on the MacArthur Park Apartments (Project) for MPM Apartments, L.P. in Los Angeles County. DLSE served the Assessment that same date by mail. A P West transmitted its Request for Review to the Labor Commissioner postmarked January 16, 2013, 66 days

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[1] All statutory references are to the California Labor Code unless otherwise specified.

after service of the Assessment.[2]

On February 15, 2013, DLSE mailed to the Hearing Officer and A P West an Application for Order to Show Cause Why Request For Review Should Not Be Dismissed (Application). The Application set forth the November 1, 2012, date of the issuance and service of the Assessment, the January 16, 2013, date of the Request for Review and the January 18, 2013, date of DLSE's receipt of the Request for Review. The Application set forth the grounds for the Application, including reference to the relevant language of Labor Code section 1742 providing that an affected contractor or subcontractor may obtain review of the Assessment by transmitting a written request within 60 days after service of the assessment. The Application also set forth relevant language of regulations pertaining to the service of assessments by mail, the filing of a request for review, and the method for computation of time, referring to California Code of Regulations, title 8, sections 17203, 17220, and 17222.

On April 12, 2013, the Hearing Officer issued the OSC, stating in relevant part:

> On February 20, 2012, Enforcing Agency filed an Application for Order to Show Cause why Request for Review Should not Be Dismissed, pursuant to Rule 27 (Cal. Code Regs., tit. 8, section 17227). After review of that Application,
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> IT IS HEREBY ORDERED that Requesting Party, A P Coast Inc., show cause why the Request for Review should not be dismissed as untimely under Labor Code section 1742, subdivision (a). Requesting Party shall file any response in writing to this Order to Show Cause (OSC) within 15 days from the date of this OSC. Enforcing Agency shall file any reply to the Requesting Party's response within 10 days following the service of such response. Any evidence submitted in support or opposition to the OSC shall be by affidavit or declaration under penalty of perjury.

A P West filed neither a response to the OSC nor an opposition to DLSE's Application.

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[2] Grapevine Construction, Inc. was also named in the Assessment and served by DLSE on November 1, 2012. Grapevine Construction, Inc. did not file a request for review.

DISCUSSION

Section 1742, subdivision (a) provides that an affected contractor or subcontractor may request review of a civil wage and penalty assessment within 60 days of service of the assessment.[3] If no hearing is requested within this period, "the assessment shall become final." (§ 1742, subd. (a).) Rule 22, subdivision (a) (Cal. Code Regs., tit. 8, § 17222, subd (a)) restates the 60-day filing requirement and expressly provides that "Failure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules."

The Assessment became final on January 5, 2013, the 65th day after it was served. This was the last day on which A P West could have timely requested review. A P West did not transmit its Request for Review until January 16, 2013. Under section 1742, subdivision (a) and Rule 22, the Director is without jurisdiction to proceed on the untimely Request for Review. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831; *Division of Labor Standards Enforcement v. Davis Moreno Construction, Inc.,* *supra,* 193 Cal.App.4th 560.)

FINDINGS

1. A P West did not timely request review of a November 1, 2012, Civil Wage and Penalty Assessment issued by the Labor Commissioner.

2. The Assessment became a final order on January 5, 2013.

3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by A P West.
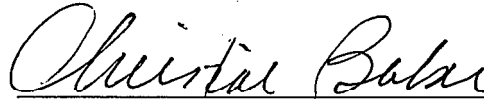
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[3] Since section 1741, subdivision (a) requires that service of the assessment be completed by mail "pursuant to Section 1013 of the Code of Civil Procedure," the time extension rules of Code of Civil Procedure section 1013 are taken into account, thus giving an in-state contractor or subcontractor 65 days from the date of mailing of the assessment to file a request for review. (See Cal. Code Regs., tit 8, § 17203, subd. (a).)

ORDER

A P West's Request for Review is dismissed. The Hearing Office shall issue a Notice of Findings which shall be served with this Decision on the parties and any scheduled Hearing on the Merits shall be taken off calendar.

Dated: _May 15, 2013_

Christine Baker
Director of Industrial Relations