

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Lifestyle Landscapes, Inc.

Case No. **12-0182-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

INTRODUCTION

Affected subcontractor, Lifestyle Landscapes, Inc. (Lifestyle) requested review from a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on April 19, 2012 regarding County of San Diego, County Operation Center (Project). DLSE served the Assessment on Lifestyle, its prime contractor ROEL Construction, Inc. (ROEL), and the Awarding Body, County of San Diego, on April 19, 2012. The Assessment was not served on the sureties until April 26, 2012. Lifestyle's Request for Review is postmarked June 26, 2012.

The appointed Hearing Officer, Makiko I. Meyers, issued 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 a request for review to be transmitted to DLSE within 60 days after service of the Assessment. Lifestyle submitted a written objection to the OSC, and DLSE submitted a reply. For the reasons below, I find that the Request Review was untimely and must be dismissed.

FACTS

DLSE issued the Assessment concerning the Project against Lifestyle on April 19, 2012, served it on Lifestyle, ROEL and the Awarding Body the same day. DLSE did not

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

serve the sureties until April 26, 2012. Lifestyle's Request for Review is dated June 25, 2012, but, the Request was not placed in the mail until the next day, June 26, 2012, according to the postmark².

On August 30, 2012, the Hearing Officer issued an Order to Show Cause Why the Request for Review Should not be Dismissed as Untimely. Lifestyle filed its objection to the OSC arguing that its Request for Review should be considered timely as it did not receive the Assessment "until the week of April 23 – 27, 2012." April 19, 2012, the day DLSE served the Assessment, was a Friday, and "the week of April 23-27" was the following week. Lifestyle appears to further argue that it calculated the 60 days to request review as running from April 26, 2012, the day the sureties were served. On the other hand, DLSE argues that the Assessment was served on Lifestyle by mail on April 19, 2012, giving Lifestyle until June 25, 2012, to request review.³ Lifestyle's Request for Review, mailed on June 26, 2012, was therefore untimely.

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 after service of the assessment.⁴ If no hearing is requested within this period, "the assessment shall become final." (*Id.*) Rule 22 (a) [Cal. Code Regs., tit. 8, § 17222(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."

² Lifestyle submitted its Request for Review via Certified Mail.

³ 60 days plus five days for service by mail from April 19, 2012, is June 24, 2012, which was a Sunday. The following business day was Monday June 25, 2012.

⁴ Since section 1741, subdivision (a) requires that the 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 also 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* Rule 3(a) [Cal. Code Regs., tit. 8, § 17203(a)].

The subject Assessment became final on June 25, 2012, the 65th day after it was served by mail. This was the last day on which Lifestyle could have timely requested review. Lifestyle did not transmit its Request for Review until the next day, June 26, 2012. Under section 1724, subdivision (a) and Rule 22, the request for review is therefore untimely and the Director is without jurisdiction to proceed. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831; *Division of Labor Standards Enforcement v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App. 4th 560.)

ORDER

1. The affected subcontractor, Lifestyle Landscapes, Inc., did not timely request review of the April 19, 2012 Civil Wage and Penalty Assessment issued by DLSE.
2. The Assessment became a final order on June 25, 2012.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Lifestyle.

Lifestyle Landscapes, Inc.'s request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 11/4/, 2013



Christine Baker
Director of Industrial Relations