

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Versa Landscape, Inc.

Case No. 09-0069-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

INTRODUCTION

Affected subcontractor, Versa Landscape, Inc. ("Versa") requested review from a Civil Wage and Penalty Assessment ("CWPA") issued by the Division of Labor Standards Enforcement ("DLSE") on January 14, 2009 regarding Activity Field at Buena Vista School ("Project"). The CWPA assessed Versa for unpaid prevailing wages in the amount of \$858.00 and penalties under Labor Code sections 1775 and 1813 in the amount of \$75.00. Based on the documents in the hearing file, on April 9, 2009, the Hearing Officer, Makiko I. Meyers, issued an Order to Show Cause re Timeliness of the Request of Review ("OSC" or "Order"). The OSC hearing was set for May 7, 2009. The Order required the parties to submit evidence and legal argument by April 30, 2008. Neither party chose to submit additional documents beyond what is in the hearing file or points and authorities.

For the reasons stated below, the Director now dismisses the Request for Review as untimely.

FACTS

DLSE served the CWPA on Versa at 1760 Marlsborough Ave., Riverside, CA 92507 ("Marlsborough Address") via certified mail on January 14, 2009. The CWPA directed to Versa to file a request for review with the DLSE Civil Wage and Penalty Review Office ("Review Office") in Sacramento within 60 days after the service of the CWPA. Versa prepared a letter (dated January 22, 2009) requesting review of the CWPA. This letter was

not mailed until March 12, 2009. The letter was sent to the DLSE field office in Long Beach, not to the Review Office. At the OSC hearing, Versa conceded that the Marlborough Address was its correct address at the time of service of the CWPA and that its Request for Review was sent to a wrong address.

Versa never sent a request for review to the DLSE's Review Office in Sacramento. When DLSE received the Request for Review on March 16, 2009 ("Request"), the DLSE field office forwarded the Request to the Review Office. The Review Office received the Request on March 30, 2009, 75 days after service of the CWPA.

DISCUSSION

Labor Code section 1742(a)¹ provides that a request for review must be filed within 60 days from the date a CWPA is served on affected contractor or subcontractor. Section 1742(a) further provides "[i]f no hearing is requested within 60 days after service of the assessment, the assessment shall be final." A request for review must be directed to the Labor Commissioner at the address that appears on the assessment. Cal. Code of Regs., tit. 8, §17222 ("Rule 22"). Rule 22(a) expressly states that "[f]ailure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules." Where a statute sets out a duty and a consequence for the failure to act in conformity, that statute is said to be mandatory. *California Correctional and Peace Officers v. State Personnel Board* ("CCPOA") (1995) 10 Cal.4th 1133. See also, *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540.

In *Pressler v. Bren* (1982) 32 Cal.3d 831, the court analyzed section 98.2, which sets the time limit for appealing from a Labor Commissioner ruling on a claim for unpaid wages. Section 98.2(a) provides in part: "Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo." The Court found this requirement to be jurisdictional, in light of the language of former subsections (c) and (d) [now (d) and (e)], which make final and

¹ All unspecified section references are to the Labor Code, unless otherwise specified.

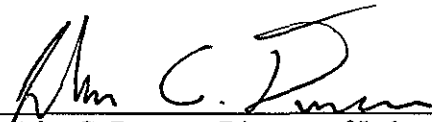
enforceable any order, decision or award that has not been appealed timely. *Pressler* held that “[a] late filing may not be excused on the grounds of mistake, inadvertence or excusable neglect.” *Id* at 837.

Here, Versa concedes that the Request was not filed with the appropriate office; by the time the correct office received the Request, the period within which to request review had expired. Due to Versa’s failure to make a timely request for review, the Director lacks jurisdiction to review the CWPA.

ORDER

Therefore, the 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: 6/5/09



John C. Duncan, Director of Industrial Relations