

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Salomao Amado, Amado Enterprises, Inc.,  
and Amado Staffing, Inc.,  
Petitioners,

Nos. LB-22-592, LB-22-593, LB-22-594, LB-  
22-595, LB-22-596

Dated: January 13, 2023

v.

Office of the Attorney General, Fair Labor  
Division,  
Respondent.

ORDER OF DISMISSAL

These are consolidated appeals from civil citations issued by the Fair Labor Division under provisions of the labor laws. G.L. c. 149, §§ 148B, § 148C, 159C; G.L. c. 151, §§ 15, 19(3). The division has filed a motion to dismiss, which the petitioners oppose.

The applicable statute permits appeals to be taken “within ten days of the receipt of the citation.” G.L. c. 149, § 27C(b)(4). The petitioners stipulate that they received the citations on November 17, 2022, and filed the appeal more than ten days later (on November 30, 2022). The division therefore maintains that the appeal was untimely.

In response, the petitioners report that they initially assumed that the appeal period was ten *business* days long. On the eighth business day (by their count), the petitioners retained counsel, who filed the appeals immediately. In these circumstances, the petitioners suggest that the ten-day period should be “tolled.” *See DeOliveira v. FLD*, No. LB-08-396, 2009 WL 5966900 (DALA Aug. 28, 2009).

Certain statutory deadlines are subject to tolling on the authority of pertinent laws or regulations. *E.g.*, G.L. c. 260, § 7; 804 C.M.R. § 1.04(4)(d). In the absence of such authorities, the judicial courts have expressed willingness to toll deadlines as an exercise in equity. *See Cherella v. Phoenix Techs. Ltd.*, 32 Mass. App. Ct. 919, 920 (1992). Administrative agencies do

not share the courts' equitable legacy. Agencies are creatures of statute, possessing only the powers that the Legislature has delegated to them. *See Commissioner of Revenue v. Marr Scaffolding Co.*, 414 Mass. 489, 493 (1993). It is therefore unlikely that a doctrine sounding in equity could permit an administrative tribunal to relax a statutory deadline. *See Schwartz v. FLD*, No. LB-19-379, at 7 (DALA Dec. 16, 2019); *Genetics & IVF Inst. v. Kappos*, 801 F. Supp. 2d 497, 509 (E.D. Va. 2011).

Even on the assumption that equitable tolling generally is available to administrative litigants, the doctrine does not reach this case. Equitable tolling is "exceedingly limited" in scope. *Halstrom v. Dube*, 481 Mass. 480, 485 (2019). It may be warranted where a defendant instigated a plaintiff's lateness, where a plaintiff commenced a timely but defective action, or in cases of "excusable ignorance." *Shafnacker v. Raymond James & Associates, Inc.*, 425 Mass. 724, 727-28 (1997); *Coyne v. Nascimento*, 78 Mass. App. Ct. 1110 (2010) (unpublished memorandum opinion). The last of these rubrics may at first sound applicable: but the courts have considered ignorance to be "excusable" specifically where it was caused either by the defendant or by circumstances exceeding the "ignorant" person's control. *See Kale v. Combined Ins. Co. of Am.*, 861 F.2d 746, 752 (1st Cir. 1988); *Edwards v. Johnson*, 198 F. Supp. 3d 874, 880 (N.D. Ill. 2016); *Chappell v. Nat'l City Corp.*, No. 15-cv-3855, 2017 WL 2955743, at \*5 (N.D. Cal. July 11, 2017); *Ruane v. Jancsics*, 2001 Mass. App. Div. 103 (2001). Only the petitioners were responsible for their misinterpretation of the governing statute. And they could have remedied that error through reasonable diligence. *See also DeOliveira*, 2009 WL 5966900, at \*2; *Nelson v. FLD*, No. LB-12-76, at 6 (DALA Sept. 11, 2012); *Tos v. FLD*, No. LB-11-758, at 5 (DALA Feb. 13, 2012).

“A statutory appeal period constitutes a jurisdictional prerequisite to a [tribunal’s] authority.” *Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020). That general rule applies to appeals from the division’s citations. *See Andino v. FLD*, No. LB-21-572, 2022 WL 9619031, at \*1 (DALA Jan. 21, 2022) (collecting cases). In the absence of jurisdiction, a tribunal’s only permissible function is “dismissing the cause.” *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018). It is therefore ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED. Any appeal from the instant order must be brought in the superior court within thirty days.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate