

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

AV Seals Labor Group LLC and
Charles Webber,
Petitioners,

No. LB-23-0622

Dated: April 4, 2024

v.

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

ORDER GRANTING MOTION TO DISMISS APPEAL NO. LB-22-0625

The Respondent, the Office of the Attorney General, Fair Labor Division (“FLD”), has moved, pursuant to 801 CMR 1.01(4)(a) and 801 CMR 1.01(7)(g)(3), to dismiss the appeal of Citation Nos. 23-01-73547-001 through 23-73547-004 issued against AV Seals Labor Group LLC and Charles Webber on the ground that they failed to file a notice of appeal with the Office of the Attorney General (“AGO”). I agree and therefore dismiss the appeal.

Factual and Procedural Background

Resolution of this motion is fairly straightforward. Nevertheless, because the travel of this case has involved some twists and turns, I address these additional details for the sake of completeness and to provide some context in the event of future review by the Superior Court.

The citations relevant to this order were issued on December 5, 2023, the date on which they were sent via e-mail to the Petitioners’ counsel, with whom the FLD had been communicating about the underlying violations. (Exhibit A to Motion to Dismiss). Responding that same day, counsel asked about the appeal process. (*Id.*). In reply, the FLD directed counsel to the second page of the citations, which states that any appeal must be filed within 10 (ten) days

to both DALA and the AGO. (*Id.*).

On December 14, 2023, the Petitioners filed their notice of appeal with this DALA via its online portal. The Petitioner never filed a notice of appeal with the AGO.

Although the Petitioners' appeal listed the name of their counsel and his contact information, they apparently filed their appeal with this Division on a *pro se* basis and are not represented by counsel in this appeal. This has resulted in some confusion. DALA directed its Acknowledgement of Appeal and Notice of Pre-Hearing Conference to counsel. The FLD served its January 5, 2024 motion to dismiss upon counsel as well. As far as I can tell, when counsel received these documents, he did not inform either DALA or the FLD that he was not acting as counsel and that case filings should be sent to the Petitioners directly.¹

It was only when I e-mailed counsel on February 4, 2024 to inquire after the status of any opposition to the motion to dismiss that counsel informed DALA and the FLD that he was not representing the Petitioners: "Thanks for the email. We do not represent AV Seals or Charlie Webber. Just wanted to make sure that you are also sending him this information. Thanks." At this point, DALA and the FLD began communicating directly with Mr. Webber.

Because it was not clear precisely when the Petitioners first received the motion to dismiss and because Mr. Webber represented in a pre-hearing conference that he desired legal representation and expected to be in a position to retain counsel in the near-term, I extended the due date for the Petitioners' opposition to the motion to dismiss to March 8, 2024.

As of March 8, 2024, Mr. Webber had not retained counsel and asked whether he could

¹ It is possible that counsel did not notice that neither AV Seals nor Mr. Webber were on the service list for the Notice of Pre-Hearing Conference, Acknowledgement of Appeal, or the Motion to Dismiss, whereas he was included. Similarly, he may not have noticed that he was a recipient of the FLD's e-mail serving its motion to dismiss, but not AV Seals or Mr. Webber.

respond to the motion to dismiss via e-mail. I assented to this request. Mr. Webber then sent an e-mail that related to the substance of the underlying citations, but did not address the FLD's motion to dismiss. I reminded Mr. Webber that he was to respond to the motion to dismiss and attached the FLD's motion and two accompanying exhibits for his convenience. Mr. Webber responded later that day, stating: "I still want to appeal it your honor." He then e-mailed again that day, stating: "I will have counsel retained by the end of the month. I needed more time to get retainer funds together."

Analysis and Conclusion

In the context of appeals under G.L. c. 149, §27C(b)(4), the failure to file a notice of appeal on both DALA and the AGO is a jurisdictional defect requiring dismissal of the appeal. *Elias Delana, Jr. & Idea Painting Co., Inc. v. OAG*, LB-23- 0327; LB-23-0437, 2023 WL 7018556, at *5 (Order of Dismissal October 17, 2023) (citations omitted). The Petitioners offer no explanation for the failure to file a timely notice of appeal on the AGO. The failure may have resulted from confusion, inadequate legal advice, or from some other source. Regardless, even if the Petitioners' failure was understandable, this Division lacks equitable authority to excuse departures from the statute's strict requirements. *Id.* at *4 (citations omitted).

Accordingly, this appeal is DISMISSED.

Any appeal of this order must be brought in the Superior Court within 30 days.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole
Timothy M. Pomarole

Notice sent via e-mail and regular mail to:

Charles Webber
AAG Karina Valencia