

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

September 8, 2023

In the Matter of
Core Contracting Services, Inc.

OADR Docket No. 2022-001
DEP File No. 00012491
Woburn, MA

RECOMMENDED FINAL DECISION

Background

Core Contracting Services, Inc. (“Petitioner”) filed this appeal to challenge the Penalty Assessment Notice (“PAN”) (PAN-#00012491) issued by the Massachusetts Department of Environmental Protection’s Northeast Regional Office (“MassDEP”) in the amount of \$16,050.00. On January 27, 2022, Presiding Officer Jones issued an Order for Petitioner to Provide a More Definite Statement (“the January 27, 2022 Order”) because the Petitioner’s appeal notice did not comply with the requirements of 310 CMR 1.01(6)(b) or the requirements of the PAN for filing an appeal. The Petitioner’s response was due by February 11, 2022; no response was filed.

On March 18, 2022, MassDEP moved to dismiss the appeal for the Petitioner’s failure to comply with the January 27, 2022 Order and the requirements of 310 CMR 1.01(6)(b), 310 CMR

1.01(11)(b)¹ and the PAN. On March 21, 2022, the Office of Appeals and Dispute Resolution (“OADR”) received a copy of an email message from MassDEP’s counsel (sent to the Petitioner and his attorney) which referenced an email message she had received from the Petitioner, in which the Petitioner indicated that he did not have the email message with the January 27, 2022 Order. MassDEP’s counsel forwarded the January 27, 2022 Order to the Petitioner and his attorney and directed the Petitioner to direct further questions to OADR. In response to MassDEP counsel’s email message, the Petitioner sent two email messages, both of which also were sent to his attorney, MassDEP’s counsel and OADR. The first message stated, “We need to start all over with this, please, thank you.” and the second message stated “Hi, On something as important as this why not send an email, certified letter, phone call, ZOOM etc...all together? One email????? Seems a bit ridiculous!”

On March 22, 2022, Presiding Officer Rothchild directed the Petitioner to respond to MassDEP’s Motion to Dismiss. In her order, a copy of which also was sent to Petitioner’s attorney, Presiding Officer Rothchild told the Petitioner that in the response he could explain why he failed to comply with the initial January 27, 2022 Order. See Order for Petitioner to Respond to MassDEP’s Motion to Dismiss (March 22, 2022). The Petitioner’s response was due by March 29, 2022; no response was filed. As discussed below, the Petitioner failed to file a proper appeal; failed to respond to the Order for a More Definite Statement; failed to respond to MassDEP’s Motion to Dismiss; and failed to respond to the Order for Petitioner to Respond to

¹ 310 CMR 1.01(11)(b) provides in part that “[i]f the more definite statement is not filed within the prescribed deadline, the Presiding Officer may either dismiss the adjudicatory appeal, grant the relief sought, or make another order as may be appropriate.”

MassDEP's Motion to Dismiss. Therefore, I recommend that MassDEP's Commissioner issue a Final Decision allowing MassDEP's Motion to Dismiss and dismissing the appeal.

Discussion

An administrative appeal of a PAN is initiated when a notice of claim is filed with OADR. 310 CMR 1.01(c); 310 CMR 1.01(6)(a).² The requirements of 310 CMR 1.01(6)(a) are mandatory. The PAN at Section III., ¶ 9, contained instructions for filing an appeal. Specifically, ¶ 9.b. stated that if the Petitioner intended to appeal the PAN, the Petitioner was required to file with OADR a written statement that denied the alleged facts and/or asserted that the assessed penalty amount is excessive; and clearly and concisely stated every point of fact and law it intended to raise in the adjudicatory hearing.

The Petitioner failed to file a Notice of Claim that provides the specific reasons for filing the appeal, in violation of 310 CMR 1.01(6)(b), which requires the following information in the Notice of Claim:

(b) Form and Content. The notice of claim for adjudicatory appeal shall state specifically, clearly and concisely the facts which are grounds for the appeal, the relief sought, and any additional information required by applicable law or regulation.... When the contents of a notice of claim do not meet the requirements of 310 CMR 1.01 and any other applicable regulations, the Presiding Officer shall dismiss the appeal or require a more definite statement. If the person filing the notice of claim fails to file a more definite statement within the period specified, the appeal shall be dismissed.

Additionally, the Petitioner failed to comply with the PAN itself, which required the following as part of the Petitioner's appeal:

² 310 CMR 1.01(6)(a) provides that "[a]ny person having a right to initiate an adjudicatory appeal shall file a written notice of claim for an adjudicatory appeal. The notice shall be filed within the time prescribed by any applicable provision of law, or in the absence of a prescribed time period, within 21 days from the date that the notice of Department action was sent to a person."

B. Effective twenty-one days after the date of the issuance of this Notice, Respondent shall be deemed to have waived its right to an adjudicatory hearing on the civil administrative penalty assessment unless, within said twenty-one (21) days, Respondent files with the Department a written statement that:

(1) does either or both of the following and does so subject to and in compliance with the applicable provisions of the Department's Rules for the Adjudicatory Proceedings, 310 CMR 1.00;

(a) denies what is set forth in Section II [of PAN #00012491]

(b) asserts that the money amount of the civil administrative penalty, as set forth in paragraph 7 [of PAN #00012491], is excessive; and

(2) clearly and concisely states every point of fact and law Respondent intends to raise in the adjudicatory hearing. (emphasis added)

The Petitioner failed to comply with the preceding requirements.

As the party bringing this administrative appeal, it was the Petitioner's responsibility to properly file the appeal in accordance with the directions provided in the appealable decision, here the PAN, and to respond to the Order of the Presiding Officer. Petitioner's appeal notice did not comply with the applicable requirements. A Presiding Officer provided the Petitioner with an opportunity to correct the defects. A second Presiding Officer provided the Petitioner with an opportunity to explain his failure to comply with the prior Presiding Officer's Order and to respond to MassDEP's Motion to Dismiss. Petitioner availed himself of neither opportunity. As a result, the only appropriate remedy is to grant MassDEP's motion and dismiss the appeal.

Conclusion

I recommend that the Commissioner or her designee issue a Final Decision dismissing this appeal, affirming the PAN and making the PAN final.

Date: September 8, 2023

Michael W. Dingle

Michael W. Dingle
Presiding Officer

NOTICE- RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

SERVICE LIST

In the Matter Of:

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Docket No. 2022-001

File No. 00012491

Woburn, MA

Representative

Party

John James Mahoney
Core Contracting Services, Inc.
44 Simonds Road
Lexington, MA 02420
jmahoney@coreservs.com

PETITIONER

George P. Katsarakes, Esq.
Law Office of George P. Katsarakes, PC
56 Middlesex Turnpike, Suite 220
Burlington, MA 01803
george@katsarakes.com

PETITIONER

Colleen McConnell, Regional Counsel
MassDEP-NERO
150 Presidential Way
Woburn, MA 01801
Colleen.Mcconnell@mass.gov

DEPARTMENT

Cc:

Eric Worrall, Regional Director
MassDEP-NERO
150 Presidential Way
Woburn, MA 01801
Eric.Worrall@mass.gov

DEPARTMENT

Heidi Zisch, Chief Regional Counsel
MassDEP-NERO
150 Presidential Way
Woburn, MA 01801
Heidi.Zisch@mass.gov

DEPARTMENT

Jakarta Childers, Program Coordinator
Office of General Counsel
MassDEP - Boston
100 Cambridge Street, 9th Floor
Boston, MA 02114
Jakarta.Childers@mass.gov

DEPARTMENT

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Recommended Final Decision

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