

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

C.A. NO. 2484CV00501

JUSTIN FORKUO,

Plaintiff,

v.

AUTO DAMAGE APPRAISER
LICENSING BOARD,

Defendant.

**DEFENDANT’S MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION**

On February 21, 2024, Plaintiff Justin Forkuo filed a complaint, pursuant to G.L. c. 30A § 14, seeking judicial review of a final decision by Defendant the Auto Damage Appraiser Licensing Board (the “Board”) that permanently revoked his auto damage appraiser license. The Board respectfully moves this Court to dismiss Forkuo’s Complaint for lack of subject matter jurisdiction, pursuant to Mass. R. Civ. P. 12(b)(1), because it was filed outside the thirty-day window for seeking review established by G.L. c. 30A, § 14. Therefore, this Court lacks jurisdiction over the subject matter of Plaintiff’s administrative appeal, warranting dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

The Board, among other things, is responsible for the administration and oversight of licensing individuals as auto damage appraisers. M.L. c. 26 § 8G. This includes ensuring honest business practices among license holders and, where necessary, disciplining licensees who do not meet the Board’s standards. Id. Where a licensee is accused of unlawful or unethical conduct, the

Board is empowered to hold a disciplinary hearing to determine whether sanctions are warranted, which may include cancellation of a license. Id.

Prior to this action, Forkuo held a motor vehicle damage appraiser license. Complaint. On February 24, 2023, the Board notified Forkuo that it would be conducting a disciplinary hearing in connection with “findings made in a civil action . . . in which judgments were entered against [him] for fraud and deceit during the course of [his] operating a business as a motor vehicle damage appraiser.” AR 1. The Board noted that at the hearing it would decide whether the civil judgment should result in disciplinary action against him, “which could include the permanent revocation of [his] motor vehicle damage appraiser license.” AR 1-2. The notice stated that hearing had been scheduled for March 16, 2023, at 10am. AR 2.

Just before the March 16 hearing, Forkuo informed the Board that he was appealing the civil judgment at issue and requested a postponement pending resolution of that appeal. AR 5. The Board agreed. AR 7. After a docket check by the Board revealed that Forkuo never appealed the superior court decision, the Board rescheduled his hearing for May 18, 2023. AR 20. Again, just before the May 18 Board meeting, Forkuo sought a continuance, which the Board allowed until July 12. Id. In July Forkuo again sought a continuance, which the Board allowed until October 23, 2023. Id. Represented by counsel, Forkuo finally appeared before the Board on October 23, 2023. AR 13-19. After hearing the evidence, the Board voted 3-2 to permanently revoke Forkuo’s motor vehicle damage appraiser license. AR 18. Counsel for Forkuo requested a written decision and the Board agreed. Id. On October 30, 2023, the Board issued its final decision permanently revoking Forkuo’s license. The decision was emailed to Forkuo and his counsel that day. Nearly six weeks later, on December 12, 2023, counsel for Forkuo contacted the Board seeking reconsideration of its decision permanently revoking Forkuo’s license. The Board did not formally respond to this

request where it was untimely. On January 22, 2024, the Board sent a courtesy email to Forkuo's counsel stating that, among other things, the request for reconsideration "was filed too late," citing G.L. c. 30A § 14. On February 21, 2024, Forkuo initiated this action for judicial review of the October 30, 2023 decision, pursuant to G.L. c. 30A § 14, approximately four months after it had been issued.

ARGUMENT

This action, brought pursuant to G. L. c. 30A, § 14, is untimely and should therefore be dismissed for lack of subject matter jurisdiction. *Friedman v. Bd. of Registration in Med.*, 414 Mass. 663, 665 (1993) ("Failure to file for judicial review of an administrative decision within the time specified in the statute results in the dismissal of the appeal."); Mass. R. Civ. P. 12(b)(1).

Section 14 provides that an action for judicial review of an agency decision shall be commenced in court "within thirty days after receipt of notice of the final decision of the agency." G.L. c. 30A, § 14(1). Here, the Board's final decision was issued on October 30, 2023, A.R. 20, and emailed directly to both Forkuo and his attorney Jacob Morris. Even allowing for an additional three days for receipt of the decision, see Mass. R. Civ. P. 6(d), Forkuo is presumed to have received notice of the Board's decision by no later than November 2, 2023. As a result, Forkuo had until December 4, 2023¹-- thirty days after the latest date he could be presumed to have received the Board's decision -- to either commence this action or request an extension from the Court. See G.L. c. 30A, § 14(1). Forkuro did neither and instead, on December 12, 2023, his counsel sent an untimely letter to the Board requesting rehearing and reconsideration of the

¹Because allowing three additional days for receipt of the decision would extend the prescribed thirty-day window for seeking judicial review to Saturday, December 2, 2023, under this framework for calculating Forkuo deadline, he would have had until the following Monday, December 4, 2023, to file his complaint. *See* Mass. R. Civ. P. 6(a).

revocation decision. Forkuo, through his counsel, then waited until February 21, 2024, to initiate this action – one hundred and fourteen days after the Board issued its final decision, and far outside of the thirty-day window mandated by c. 30A, § 14(1). Forkuo, seemingly aware of this fatal defect in his pleadings, includes allegations in his Complaint aimed at blaming the Board for his untimeliness. Specifically he alleges that the Board “never informed Mr. Forkuo, or his counsel, of his right to appeal” and alleges that his Complaint is timely because it was filed within 30 days of the Board informing him of the right to judicial review under G.L. c. 30A, § 14. But this misstates the law. Section 14 is very clear that it is “receipt of the notice” that triggers the thirty days to file a claim. Here, that was October 30, 2023. AR 20. Moreover, there is no statutory requirement that agencies inform claimants of their right to judicial review under Chapter 30A, further undermining Forkuo’s claim. Where Forkuo was represented by counsel throughout the action before the Board, he has no excuse for his untimeliness.

Forkuo’s failure to bring this appeal within the thirty-day period permitted under Section 14 deprives this Court of jurisdiction over the subject matter of this action, requiring dismissal of the Complaint. *Rinaldi v. State Bldg. Code Appeals Bd.*, 56 Mass. App. Ct. 668, 671 (2002). This jurisdictional requirement can neither be waived nor excused by the Court. *See Maitland v. Board of Registration in Med.*, 448 Mass. 1006, 1007 (2007) (explaining that a judge cannot “alter the requirements of G.L. c. 30A, § 14(1)"); *Flynn v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 668, 670 (1984). Indeed, seeking judicial review after the thirty-day deadline is one of the “errors or omissions [that] are seen on their face to be so repugnant to the procedural scheme, so destructive of its purposes, as to call for dismissal of the appeal.” *Schulte v. Director of the Div. of Employment Sec.*, 369 Mass. 74, 79 (1975); *accord* Mass. R. Civ. P. 12(h)(3) (stating that a court “shall dismiss the action” whenever it appears that the court lacks subject-matter jurisdiction).

Where Forkuo has not met his burden of proving that the Complaint was filed within the thirty-day window required by G. L. c. 30A, § 14(1), dismissal is mandatory. *Miller v. Miller*, 448 Mass. 320, 325 (2007) (“The burden is on the party asserting jurisdiction to prove jurisdictional facts.”).

CONCLUSION

For the forgoing reasons, the complaint should be dismissed for lack of subject-matter jurisdiction.

Respectfully submitted,

AUTO DAMAGE APPRAISAL LICENSING
BOARD

By its attorney,

ANDREA JOY CAMPBELL
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Dated: May 21, 2024

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024, a copy of this document was served by email
upon the following:

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