

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Albert Martins
George Balich,
Petitioners,

Docket No. LB-25-0610
Docket No. LB-25-0611

Dated: May 14, 2026

v.

Office of the Attorney General
Fair Labor Division,
Respondent.

Appearances:

For Petitioners: Alan D. Rose, Jr., Esq.
Jessica L. Perillo, Esq.
George Balich, *pro se*
For Respondent: Blake Giosa, Esq.

Administrative Magistrate:

James Rooney

Summary of Decision

A trustee of a private school and another trustee who was also the treasurer of the school appealed a citation the Fair Labor Division issued to them for failure to pay wages of a school employee. Each man filed a timely appeal with the Division of Administrative Law Appeals but neither also filed his appeal with the Fair Labor Division. Because the Wage and Hour statute requires filing an appeal of a citation with both the Division of Administrative Law Appeals and the Fair Labor Division, these appeals were untimely. See *Idea Painting v. Office of the Attorney General*, Docket No. LB-23-0327 (DALA, Oct. 30, 2023) (affirmed *Idea Painting, Inc. v. Attorney Gen.*, No. 2384CV02952, 2024 WL 4217947 (Suffolk Super. Sept. 03, 2024). Consequently, the Fair Labor Division's motion to dismiss Mr. Martins's appeal is granted. After the Division had filed its motion to dismiss, it filed an amended citation dropping Mr. Balich. Hence, his appeal has already been resolved.

DECISION

The Academy at Penguin Hall was a private Catholic girls' high school in Wenham, Massachusetts. In June 2025, it shut down and filed for bankruptcy. The school's tennis coach complained to the Office of the Attorney General about nonpayment of \$2,797.60 in wages.

On October 9, 2025, the Fair Labor Division issued a citation for nonpayment of those wages in violation of the Wage and Hour statute, M.G.L. c. 149, § 148, to the school, George Balich, the chair of the school’s board of trustees, and Albert Martins, the school’s treasurer and a member of the board of trustees. The citation also included a penalty of \$1,260. The citation informed the three recipients that:

You have 10 calendar days from receipt to appeal these citations. Any appeal must be filed with **both** the Fair Labor Division and the Division of Administrative Law Appeals.¹

(Emphasis in original.)

Mr. Martins filed an appeal with the Division of Administrative Law Appeals (DALA) on October 18, 2025 through DALA’s online portal. Mr. Balich similarly filed an appeal with DALA the following day through the online portal. Neither man sent a copy of the appeal to the Fair Labor Division. The school itself did not appeal.²

In November 2025, the Fair Labor Division moved to dismiss both appeals as untimely because of the failure to file the appeals with the Fair Labor Division. On December 19, 2025, the Fair Labor Division amended its citation by dropping Mr. Balich from the citation.³

Consequently, Mr. Balich did not respond to the motion to dismiss.

¹ The Assistant Attorney General points out that this was only one of many instances in which petitioners were informed of the need to file with both DALA and the Fair Labor Division.

² Because the school did not appeal, the citation is final as to it and the Fair Labor Division may continue its enforcement efforts against the school.

³ The Fair Labor Division did not explain why it decided not to cite Mr. Balich. It could be because the Wage and Hour Act makes the president and treasurer of a corporation along with “any officers or agents having the management of such corporation” personally liable for unpaid wages, see M.G.L. c. 149, § 148, but does not mention chairs of boards of trustees such as Mr. Balich. Another possibility is that, under certain circumstances, unpaid board members

Mr. Martins filed a response to the motion and both parties made additional filings.

Discussion

The Wage and Hour statute provides that an employer cited by the Attorney General for violating the statute may appeal in accordance with the following provision:

Any person aggrieved by any citation . . . may appeal said citation . . . by filing a notice of appeal with the attorney general and the division of administrative law appeals within ten days of the receipt of the citation.

M.G.L. c. 149, § 27C(4).

Prior to 2023, no DALA decision had analyzed whether a timely appeal to DALA but a failure to timely appeal to the Attorney General meant that the appeal was untimely and thus DALA lacked jurisdiction to decide it. In that year, Magistrate Kenneth Bresler ruled that because the statute required a filing in both places, the failure to file a timely appeal with the Fair Labor Division was indeed a jurisdictional defect. *Idea Painting v. Office of the Attorney General*, Docket No. LB-23-0327 (DALA, Oct. 30, 2023). He pointed out that the dual filing requirement served a purpose under the statutory scheme because the Office of the Attorney General “must know whether the recipient of an unpaid citation has appealed it so that OAG may decide whether to seek criminal charges against the recipient, G.L. c. 149, §27C(b)(6), or place a lien on the recipient’s property. §27C(b)(6).” *Id.* at 6.⁴ On appeal, the Superior Court

of charitable corporations, such as Mr. Martins and Mr. Balich, have statutory immunity from wage claims. I will address this later in the decision as Mr. Martins has raised this as a defense.

⁴ I would add that the structure of the Wage and Hour Act focuses on providing quick relief to an employee who has not been timely paid proper wages. Typically, pay periods may be no longer than bi-weekly. Pay must be made within six or seven days of the end of the pay period. M.G.L. c. 149, § 148. Should there be any pay dispute, the Fair Labor Division may take quick action because employers are required to keep payroll records for three years and must promptly make those records available for inspection to the Fair Labor Division at “any

affirmed Magistrate Bresler’s “thorough, well-reasoned” decision. *Idea Painting, Inc. v. Attorney Gen.*, No. 2384CV02952, 2024 WL 4217947, Memorandum Decision at *8 (Suffolk Super. Sept. 03, 2024).

Mr. Martins concedes that he did not file a timely appeal with the Fair Labor Division. He relies on two DALA decisions that focus on what notice was given to the Fair Labor Division that an appeal was filed with DALA. My decision in *Distasio v Fair Labor Division*, Docket No. LB-10-545 (DALA, Jan. 9, 2019) predates *Idea Painting*. I did not purport to decide whether an appeal that was timely filed with DALA could proceed if nothing was filed with the Fair Labor Division. Although, in a motion for reconsideration, I commented that to “dismiss an appeal that was timely because the same appeal was not also sent timely elsewhere would be unduly harsh,” *Distasio*, Ruling on Motion for Reconsideration at*4 (DALA, Sept. 15, 2011), I did so in a context in which I already decided that although one petitioner did not copy her appeal to the Fair Labor Division, her husband properly filed at the Fair Labor Division an appeal that addressed the citation sent to her and thus was an adequate filing. *Id.*

Magistrate Yakov Malkiel issued a similar ruling in a matter decided after *Idea Painting* was issued. Following issuance of a citation, the cited employer filed a timely notice of appeal with DALA and a certificate saying that the notice of appeal had been served on the Fair Labor

reasonable time.” M.G.L. c. 151, § 15. And if the Fair labor Division issues a citation, the employer is given only ten calendar days to appeal. M.G.L. c. 148, § 27C(4). Further action against an employer is essentially forestalled during that ten-day period, but if no notice of appeal is sent within that time, the Fair Labor Division can continue its enforcements efforts to obtain pay for the wronged employees. Thus, notice (or lack of notice) to the Fair Labor Division plays a key role in the legislature’s purpose of providing quick relief to unpaid employees. This is no doubt the reason for requiring an appeal filing both at DALA and with the Fair Labor Division.

Division. The Fair Labor Division represented that it never received such notice. In an email conversation between counsel, the Fair Labor Division's attorney wrote, "At this point, the appeal period has passed," to which the employer's attorney responded, "We sent the appeal a long time ago." Magistrate Malkiel pointed out that the Wage and Hour statute "provides no guidance about the appeal's necessary content." *Garcia v. Fair Labor Division*, Docket No. LB-22-0271, Order at *2 (DALA, Nov. 7, 2022). He held that, in line with judicial rules on what constitutes an appeal, the employer must provide notice of who is appealing and what they are appealing. *Id.* He determined that the employer's attorney's email "provided clear notice that an appeal was underway. Emails appearing lower in the same chain fairly identified the appealing parties and the pertinent citation" being appealed, and thus the employer had met its statutory obligation to notify the Fair Labor Division of the appeal. *Id.* at 3.

Distasio and *Garcia* do not help Mr. Martins. Each involved a situation in which the appealing employer had communicated with the Fair Labor Division and the issue to be decided was whether that communication sufficed to inform the Division that the employer was appealing. Mr. Martins, on the other hand, did not communicate with the Fair Labor Division, and thus he can make no claim that he had somehow timely informed the Fair Labor Division of his appeal.

What he does claim is that he is immune from suit as an unpaid member of the Board of trustees of the Penguin Hall. A statute titled "Officers and directors of charitable corporations, tort liability" provides that:

no person who serves without compensation in excess of \$500 per year, other than reimbursement for actual expenses, as an officer, director or trustee of any nonprofit charitable organization including those corporations qualified under 26 USC section 501(c)(3) shall be liable for any civil damages as a result of any acts or omissions relating

solely to the performance of his duties as an officer, director or trustee; provided, however, that the immunity conferred by this section shall not apply to any acts or omissions intentionally designed to harm or to any grossly negligent acts or omissions which result in harm to the person.

M.G.L. c. 231, § 85W.

While it is true that the Supreme Judicial Court has determined that, when applicable, this provision is meant not simply to shield trustees of nonprofits from liability but from suit, *see Lynch v Crawford*, 483 Mass. 631, 640 (2019), it did not say that such a trustee could claim this immunity if he did not meet the jurisdictional filing deadline for an appeal. Because Mr. Martins did not make a timely appeal filing with both DALA and the Fair Labor Division, I lack the jurisdiction to rule on this substantive defense.

I note that, in any event, Mr. Martins was not simply an unpaid board member, he was also the treasurer of the school, and thus appears to have had some responsibility for making sure school staff were paid. In the *Lynch* decision, the SJC determined that the availability of statutory immunity was limited and that the president of a nonprofit was not entitled to summary decision because a factual dispute remained over whether his “acts or omissions [with respect to wage payments] were intentionally designed to harm” employees. *Id.* at 644. Thus, at best, there would have to be some exploration of the facts related to Mr. Martins’ service as school treasurer to determine if the statutory immunity applied to him. Again, DALA lacks jurisdiction to address this because Mr. Martins’ appeal was not timely filed.⁵

⁵ The Fair Labor Division contends that statutory immunity under M.G.L. c. 231, § 85W is unavailable against a citation issued by the Attorney General. The *Lynch* decision dealt with a civil suit for unpaid wages, not a citation by the Attorney General. Still, the SJC determined that the immunity applied not just to common law actions but also Wage and Hour Act statutory

Conclusion

For the reasons stated above, I dismiss Mr. Martins’ appeal as untimely because he failed to file his appeal with the Office of the Attorney General. And as noted above, the Fair Labor Division has withdrawn its citation of Mr. Balich, and hence his appeal has already been resolved.

Division of Administrative Law Appeals

James P. Rooney

James Rooney
First Administrative Magistrate

Dated: May 14, 2026

claims. 483 Mass. at 642-643. The SJC also touched on the criminal wage violations that only the Attorney General can enforce. It commented:

Section 85W, however, does not expressly exclude all “criminal misconduct” from the scope of its charitable immunity, but only “acts or omissions intentionally designed to harm” or “grossly negligent acts or omissions which result in harm to the person.” G. L. c. 231, § 85W.

Id. at 643. Thus, the SJC may be suggesting that merely negligent or unintentional failures to pay wages by an unpaid trustee of a nonprofit corporation are potentially immune even from a citation by the Fair Labor Division. But the issue is not properly raised here, so I leave it to be decided in a more appropriate case.