

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Patrick McCarthy and Maddy's Moon Bounces, Inc.,
Petitioners

v.

Docket No. LB-23-0145

Office of the Attorney General,
Fair Labor Division,
Respondent

Appearance for Petitioners:

Patrick McCarthy, pro se

Appearance for Respondent:

Tallulah Quinn Knopp, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioners appeal two civil citations issued by the Fair Labor Division of the Massachusetts Attorney General's Office.

The appeal is dismissed because the Petitioners did not timely file their appeal within ten days of receiving the citations, as required by G.L. c. 149, § 27C(b)(4).

DECISION

The Petitioners, Maddy's Moon Bounces, Inc. ("Maddy's") and Patrick McCarthy, appeal two citations issued by the Respondent, the Office of the Attorney General, Fair Labor Division ("the FLD").

I held a hearing on February 26, 2024, at the Division of Administrative Law Appeals ("DALA"), 14 Summer Street, 4th Floor, Malden, MA 02148. The hearing was recorded digitally.

I admitted into evidence Petitioners' Exhibits A-L and Respondent's Exhibits 1-20. Investigator Iona Powell-Headley and complainant Jonathan Zewiey testified on behalf of the FLD. Mr. McCarthy testified on behalf of the Petitioners.

The notice of appeal received by this Division and the front of the priority mail envelope in which it was mailed are marked for purposes of the record as "Administrative Exhibit A." The Petitioners' August 14, 2023 response to an Order to Show Cause is marked for purposes of the record as "Administrative Exhibit B."

The parties submitted post-hearing briefs, at which point the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Maddy's is a privately held company incorporated and located in Massachusetts. (Respondent's Exhibit 4).
2. Mr. McCarthy is the company's owner. (Respondent's Exhibit 4).
3. In the summer of 2019, the complainants – Jonathan Zewiey, Ryan Bratton, and Andrew Hudson – began working for the Petitioners. Their responsibilities

included picking up, setting up, and dismantling bounce houses at private residences, with occasional landscaping and construction work for Mr. McCarthy. (Zewiey Test.; Respondent's Exhibits 18-19).¹

4. In late July 2019, Messrs. Zewiey, Bratton, and Hudson left the Petitioners' employ. (Zewiey Test.; Respondent's Exhibits 18-19).

5. On July 26, 2019, Mr. Zewiey filed a complaint with the Attorney General's Office, claiming non-payment of wages totaling \$1,850.53. (Respondent's Exhibit 1).

6. On August 27, 2019, Mr. Bratton filed a complaint with the Attorney General's Office, claiming non-payment of wages totaling \$658. (Respondent's Exhibit 2).

7. On September 3, 2019, the FLD sent Mr. McCarthy a letter advising him of the complaints by Mr. Zewiey and Mr. Bratton and informing him that he must either resolve the matter with payment of restitution to the two complainants (Mr. Zewiey and Mr. Bratton)² and a penalty of \$250 or respond to the complaint by producing wage and hour records. The deadline for producing records was September 17, 2019.

(Respondent's Exhibit 5).

8. On September 20, 2019, Ms. Powell-Headley, the FLD investigator assigned to the matter, received a telephone call from Mr. McCarthy, who requested an

¹ Bounce houses are inflatable structures, typically made out of vinyl or nylon, in which people can bounce.

² The third complainant, Mr. Hudson, had not yet filed his complaint.

extension to respond to the FLD's request for documents. The deadline to produce records was extended to September 30, 2019. (Powell-Headley Test.; Respondent's Exhibits 10, 16).

9. On September 24, 2019, Mr. Hudson filed a complaint with the Attorney General's Office, claiming non-payment of wages totaling \$800. (Respondent's Exhibit 3).

10. On October 16, 2019, Ms. Powell-Headley spoke with Mr. McCarthy over the telephone and informed him that Mr. Hudson had filed a complaint as well. At Mr. McCarthy's request, the deadline to produce records was extended to November 4, 2019. (Respondent's Exhibit 10).

11. Mr. McCarthy did not produce records by November 4, 2019. (Powell-Headley Test.).

12. On November 27, 2019, the FLD issued Citation No. 19-08-56197-001 to the Petitioners for failure to make timely payment of wages, without specific intent, in violation of G.L. c. 149, § 148. The FLD assessed a civil penalty of \$1,000. (Respondent's Exhibit 6).

13. Also on November 27, 2019, the FLD issued Citation No. 19-08-56197-002 to the Petitioners for failure to furnish true and accurate payroll records to the Attorney General's Office, without specific intent, in violation of G.L. c. 151, §§ 15, 19(3). The FLD assessed a civil penalty of \$250. (Respondent's Exhibit 7).

14. On December 13, 2019, Mr. McCarthy sent an e-mail to Ms. Powell-Headley transmitting employee files for Mr. Zewiey and Mr. Bratton. (Respondent's Exhibits 8-10).

15. On December 13, 2019, Ms. Powell-Headley responded to Mr. McCarthy's e-mail, acknowledging receipt of the records for Mr. Zewiey and Mr. Bratton. She noted that the deadline had been November 4, 2019 and stated "Please send us Hudson's information as you have miss[ed] the deadline." She asked that Mr. McCarthy send Mr. Hudson's records by December 17, 2019. (Respondent's Exhibit 10).

16. The Petitioners contend that they mailed Mr. Hudson's records in December 2019. (McCarthy Test.). The FLD does not have any record of receiving Mr. Hudson's employee file in December 2019. The FLD first received Mr. Hudson's employee file in in connection with this appeal. (Powell-Headley Test.).

17. The Petitioners filed a notice of appeal -- signed by Mr. McCarthy on January 24, 2023 -- with this Division and the FLD. The FLD received the Petitioners' notice of appeal on March 1, 2023. (Respondent's Exhibit 17). The Division received the notice on February 28, 2023. (Administrative Exhibit A).³

18. On May 18, 2023, the FLD filed a motion to dismiss the appeal on the ground that the Petitioners' January 24, 2023 notice of appeal was not timely filed.

³ The priority mail envelope containing the notice of appeal received by DALA indicates that it was mailed on February 28, 2023, with an expected delivery date of March 1, 2023. This helps explain why the notice of appeal, although signed on January 24, 2023, was not received by DALA until February 28, 2023.

19. On May 26, 2023, the Petitioners filed an opposition, claiming that they had filed a prior notice of appeal in December 2019.

20. On July 11, 2023, I issued an order to show cause inviting the Petitioners to submit evidence in support of their contention.

21. On August 14, 2023, in response to the order, the Petitioners submitted: (1) an affidavit signed by Mr. McCarthy; (2) several documents highlighting errors in the citations and correspondence sent by the FLD (for example, the September 3, 2019 letter refers to Mr. McCarthy as “Paul McCarthy” and then later as “Mr. McCartney”); (3) a screenshot depicting document properties for a document titled “Request for Hearing AGO MMB 20191218”;⁴ (4) a December 13, 2019 e-mail exchange between Mr. McCarthy and Ms. Powell-Headley (summarized in findings 14 and 15 above); (5) calendars for November and December 2019 (bearing notations about events and deadlines); and (6) a report by the Tewkesbury Police Department. (Administrative Exhibit B).

22. Mr. McCarthy’s affidavit includes the following statements:

- “I completed the appeal and request for hearing documents on December 18, 2019. I printed and scanned the document and prepared it to be mailed.”
- “I mailed my notice of appeal and request for a hearing via the United States Postal Service located at 517 Boston Post Road Sudbury, MA on Friday December 20th at approximately 10 a.m.”
- “I am absolutely positive I paid cash as I always do at the post office and received a receipt from the USPS. I am extremely disappointed that I am unable to locate the receipt and I failed to properly retain the mailing

⁴ The Petitioners did not include a copy of the December 2019 notice of appeal.

proof, never thinking I would have been ignored and denied my legal right and opportunity to bring forward the truth.”

- “I assumed there was still a backlog due to COVID after I never received a hearing date or that the facts were reviewed properly and the complaint was dismissed.”
- “There is no possible chance or possibility that I failed to mail my request for a hearing, it was my absolute focus and opportunity to make sure this matter was exposed with every detail that I worked so hard to prove.”

(Administrative Exhibit B).

23. The screenshot of the document properties for the PDF of the December 18, 2019 notice of appeal states that the file name is “Request for Hearing AGO MMB 20191218.pdf,” but the “Created” and “Modified” fields are blank. (Administrative Exhibit B).

24. On October 20, 2023, I denied the FLD’s motion to dismiss. I noted that I was not making credibility determinations or weighing competing evidence at that stage. I was instead evaluating whether the evidence submitted by the Petitioners sufficed to defeat a motion to dismiss. I invited the FLD to revisit the timeliness of the Petitioners’ appeal at the hearing.

CONCLUSION AND ORDER

An employer who wishes to appeal a citation issued by the FLD, under G.L. c. 149, § 27C(b)(4), must file a notice of appeal with both the FLD and DALA within ten days of receiving the citation. G.L. c. 149, § 27C(b)(4); *Idea Painting Co., Inc. v. Office of the Attorney General – Fair Labor Division*, LB-23-0327; LB-23-0437, 2023 WL 7018556, at *5 (Div. Admin. Law App. Oct. 17, 2023) (citations omitted). The failure to timely file a notice of appeal requires dismissal. *Mr. Home Inc. v. Office of the Attorney General –*

Fair Labor Division, LB-24-0511, 2024 WL 4527809, at *1 (Div. Admin. Law App. Oct. 8, 2024) (citations omitted).

There is no dispute that the Petitioners received the citations in December 2019. Accordingly, their 2023 notice of appeal was untimely by a matter of years. As a result, their appeal must be dismissed as time-barred unless they had filed an earlier notice of appeal with the FLD and DALA on December 20, 2019, as they claim. For the reasons below, I conclude that they did not do so.

Neither the FLD nor DALA have a record of having received a December 2019 notice of appeal. It is not impossible that the notices were lost in the mail or misfiled by both the FLD and DALA, but it is not probable. The improbability is compounded by the fact that, although the Petitioners claim they had mailed the Hudson employee file to the FLD in December 2019, the FLD has no record of having received it. The suggestion that three separate documents the Petitioners claim to have mailed in December 2019 (the copies of the notice of appeal sent to DALA and the FLD and the Hudson file) either got lost in the mail or were somehow overlooked or misfiled by their recipients strains credulity.

The Petitioners offer no concrete corroboration for their contention that they mailed a December 2019 notice of appeal – there are no receipts, and a screenshot of the properties associated with the 2019 notice does not establish a creation date.⁵ Nor is there any suggestion that the US Postal Service mishandled these items.

⁵ There is no evidence that the filename of the document, which includes “20191218,” was generated automatically upon creation (or upon downloading or such other event). It bears mention that even if the document had been created on December 18, that

The Petitioners do allege sloppiness and inattention to detail by the FLD, citing various errors in the citations and in its September 3, 2019 letter. They argue that given this lack of care, it would not be surprising if the FLD had lost or misfiled their first notice of appeal.

The errors in the citations are not necessarily reflective of how incoming mail is received, opened, and logged at the FLD. It appears that Ms. Powell-Headley prepared the citations (they bear her name at the bottom), but there is no reason to conclude that she would have received or logged a notice of appeal that was not addressed to her specifically. And there is no evidence that she was the addressee. On the contrary, the instructions for appeal contained in the citations direct employers to mail notices to the FLD's Civil Citation Unit, which is where the Petitioners sent their 2023 notice of appeal. In any case, any inattention or disorganization on the part of the FLD would not explain why DALA does not have a record of having received a December 2019 notice of appeal either.

What remains is Mr. McCarthy's representation that he mailed the notices of appeal on December 20, 2019. He asserts that given his focus on this matter, "[t]here is no possible chance or possibility" that he failed to file his notice of appeal. (Administrative Exhibit B). I do generally credit Mr. McCarthy with a keen interest in exposing inconsistencies in the complainants' accounts and missteps in the FLD's investigation of this matter. Nevertheless, I am not persuaded that he fully appreciated

would not compel the conclusion that it was mailed soon thereafter, but it would be supportive evidence.

the fact that the deadline for filing an appeal was a strict requirement triggered by receipt of the citations.

For the foregoing reasons, this appeal is dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: October 8, 2025