

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Mr. Home, Inc. and William Sweeney,  
Petitioners,

No. LB-24-0511

Dated: October 8, 2024

v.

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

ORDER OF DISMISSAL

The petitioners appeal from two citations issued by the Office of the Attorney General, Fair Labor Division (division). The division moves to dismiss based on lack of jurisdiction. *See* standard rule 7(g)(3).<sup>1</sup> For the reasons that follow, the motion is meritorious.

The citations assert violations of G.L. c. 149, §§ 148 and 148B. Appeals from citations under these provisions must be “fil[ed] . . . within ten days of the receipt of the citation.” *Id.* § 27C(b)(4). The statutory deadline is jurisdictional, meaning that this tribunal has no power to extend it. *See Andino v. Attorney Gen.*, No. LB-21-572, 2022 WL 9619031, at \*1 (DALA Jan. 21, 2022). *See generally Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020). The division’s argument is that the petitioners missed their deadline.

In the posture of a jurisdictional motion to dismiss, the leading approach is for the tribunal to take the plaintiff’s or petitioner’s pleadings and evidence as true. *See Cepeda v. Kass*, 62 Mass. App. Ct. 732, 738 (2004). Here the pivotal facts are undisputed.

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<sup>1</sup> In accordance with G.L. c. 30A, § 9, the “standard rules” in this context are the provisions of 801 C.M.R. § 1.01.

The citations bear the date July 12, 2024. The division emailed the citations to the petitioners on that same day. Email is generally an appropriate method of ensuring the “receipt of the citation.” G.L. c. 149, § 27C(b)(4). *See* standard rule 4(c); Mass. R. Civ. P. 5(b)(1). An email ordinarily arrives almost as soon as it is sent. *See* standard rule 4(a). The deadline for the petitioners to file their notice of appeal was therefore July 22, 2024. Their notice is postmarked three days after the deadline. *See id.*

The petitioners assert that they also received copies of the citations by U.S. mail. They say that the paper mailing arrived on July 16, 2024. These assertions, taken as true, do not change the analysis. It remains true that the petitioners were in receipt of the citations by July 12, 2024. And the petitioners identify nothing in the text of the citations that could have communicated to them that the transmission of paper copies would restart the clock on the ten-day deadline. *See Bartini v. Berkshire Cty. Ret. Bd.*, No. CR-22-18 (DALA July 5, 2024).<sup>2</sup>

A dismissal based on a few days of lateness is a harsh result, especially where it appears that the petitioners may possess a nonfrivolous claim on the merits.<sup>3</sup> Nonetheless, the Legislature chose to make the statutory appeal period both brief and firm. *See Idea Painting, Inc. v. Attorney Gen.*, No. 2384CV02952, 2024 WL 4217947, at \*5 (Suffolk Super. Sept. 03, 2024); *Schulte v. Director of Div. of Emp. Sec.*, 369 Mass. 74, 79 (1975).

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED, the appeal is DISMISSED, and all scheduled events and deadlines are

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<sup>2</sup> Even so, the division might avert unnecessary complications in the future by informing cited parties whose citations are issued both electronically and in paper that the first date of receipt will control the timeliness of any appeal.

<sup>3</sup> It may be appropriate for the division to give the matter another look and, if the circumstances so warrant, to negotiate a fair result.

CANCELED. Under G.L. c. 30A, § 14(1), any appeal from this order must be brought in the Superior Court within thirty days.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate