

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

FarPointe, Inc.

Case No.: **19-00017-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor FarPointe, Inc. (FarPointe) submitted a Request for Review of the Civil Wage and Penalty Assessment (Assessment) served by the Division of Labor Standards Enforcement (DLSE or Labor Commissioner) on October 26, 2018, with respect to work performed by FarPointe for the City of La Habra (Awarding Body) in connection with the Boys and Girls Club Kitchen Improvements (Project) located in Orange County. The Assessment asserted that \$21,646.02 was due in unpaid prevailing wages, training fund contributions, penalties under Labor Code section 1775,¹ penalties under section 1813, and penalties under section 1777.7.

On April 9, 2019, the appointed Hearing Officer, Mirna Solis, served an Order to Show Cause (OSC) why the Request for Review should not be dismissed as untimely under section 1742, subdivision (a), which requires that a request for review be transmitted to the Labor Commissioner within 60 days after service of the Assessment. FarPointe did not submit a written response to the OSC.

For the reasons stated below, the Director finds that the time limit for requests for review under section 1742, subdivision (b), is mandatory and jurisdictional. Accordingly, the Request for Review must be dismissed.

¹ All further section references are to the California Labor Code, unless otherwise specified.

FACTS

DLSE served the Assessment on FarPointe on October 26, 2018. The Assessment arose out of work performed by FarPointe on the Project. FarPointe's Request for Review to the Labor Commissioner was postmarked on January 9, 2019, 75 days after service of the Assessment.

On March 6, 2019, DLSE mailed to the Hearing Officer and FarPointe an Application for Order to Show Cause Why Request For Review Should Not Be Dismissed (Application). The Application set forth the October 26, 2018 date of service of the Assessment, the January 9, 2019 date of the Request for Review and the January 15, 2019 date of DLSE's receipt of the Request for Review. The Application set forth the grounds for the Application, including reference to the relevant language of section 1742 providing that an affected contractor or subcontractor may obtain review of the Assessment by transmitting written request to the office of the Labor Commissioner that appears on the Assessment within 60 days after service of the Assessment. The Application also set forth relevant language of regulations pertaining to the service of assessments by mail, the filing of a request for review, and the method for computation of time, referring to California Code of Regulations, title 8, sections 17203, 17220, and 17222.

On April 9, 2019, the Hearing Officer issued the OSC, stating in relevant part: Pursuant to Rule 27 (Cal. Code Regs., tit. 8, section 17227), on March 6, 2019, the Enforcing Agency filed an Application for Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely (Application for OSC). The Enforcing Agency asserts that the Requesting Party, FarPointe, Inc. did not timely file its Request for Review in accordance with Labor Code section 1742, subdivision (b) and with Rule 22 (Cal. Code Regs., tit. 8, section 17222).

Accordingly, NOTICE IS HEREBY GIVEN that the Request for Review filed by Requesting Party FarPointe, Ins. shall be dismissed as untimely unless good cause is shown why this case should proceed. Any such showing by the Requesting Party FarPointe, Inc. shall be presented in writing in accordance with Rule 27, and shall be filed and served no later than April 22, 2019.

FarPointe filed neither a response to the OSC nor an opposition to DLSE's Application.

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DISCUSSION

Section 1742, subdivision (a), provides that an affected contractor or subcontractor may request review of a civil wage and penalty assessment within 60 days of service of the assessment.² If no hearing is requested within this period, “the assessment shall become final.” (§ 1742, subd. (a).) The regulations restate the 60-day filing requirement and expressly provide that “[f]ailure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules.” (Cal. Code Regs., tit. 8, § 17222, subd. (a).)

The Assessment became final on December 31, 2018, the 66th day after it was served.³ This was the last day on which FarPointe could have timely requested review. FarPointe did not transmit its Request for Review until January 9, 2019.⁴ Under section 1742, subdivision (a), and section 17222 of the regulations, the Director is without jurisdiction to proceed on the untimely Request for Review. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 836.)

Where a statute sets out a duty and a consequence for the failure to act in conformity, that statute is said to be “mandatory.” (*California Correctional and Peace Officers Association v. State Personnel Board* (1995) 10 Cal.4th 1133, 1145; see also *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540, 546-548.)

Since FarPointe’s Request for Review was not timely served, the Assessment is final and the Director does not have jurisdiction to conduct a hearing. (§§ 1742, subd. (a); 1777.7, subd. (c)(l).)

Based on the foregoing, the Director makes the following Findings and Order:

² Since section 1741, subdivision (a), requires that service of the assessment be completed by mail “pursuant to Section 1013 of the Code of Civil Procedure,” the time extension rules of Code of Civil Procedure section 1013 are taken into account, thus giving an in-state contractor or subcontractor 65 days from the date of mailing of the assessment to file a request for review. (See Cal. Code Regs., tit 8, § 17203, subd. (c).)

³ The 65 day after service of the Assessment on October 26, 2018, was Sunday, December 30, 2018. Pursuant to Rule 03 (Cal. Code Regs., tit 8, § 17203, subd. (a)), the time to respond was extended to the next working day, which was Monday, December 31, 2018.

⁴ Section 17203 of the regulations states in relevant part that “[u]nless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid” (Cal. Code Regs., tit. 8, § 17203, subd. (b).)

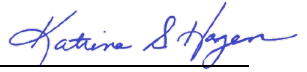
FINDINGS

1. FarPointe, Inc. did not timely request review of the October 26, 2018 Civil Wage and Penalty Assessment issued by the Labor Commissioner.
2. The Civil Wage and Penalty Assessment became a final order on December 31, 2018.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by FarPointe.

ORDER

The Request for Review of FarPointe, Inc. is dismissed.

Dated: 7/16/20

/s/ Katrina S. Hagen 
Katrina S. Hagen
Director
Department of Industrial Relations