

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the matter of the Request for Review of:

**Reynaldo Candelario Tagle individually
and doing business as Cinray Construction, Inc.**

Case No. 11-0074-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE ACTING DIRECTOR

INTRODUCTION

The Division of Labor Standards Enforcement (DLSE) moved to dismiss the Request for Review (Motion) on the grounds that the Affected Contractor, Reynaldo Candelario Tagle individually and doing business as Cinray Construction, Inc. (Cinray), failed to file it within 60 days after service of the Civil Wage and Penalty Assessment (Assessment), as required by Labor Code section 1742, subdivision (a)¹ and Rule 22 [Cal. Code Regs., tit. 8, § 17222(a)]. The appointed Hearing Officer, A. Roger Jeanson, served an Order to Show Cause (OSC) why the Request for Review should not be dismissed as untimely. Cinray was given to and including June 17, 2011, in which to file a written response. No response has been filed. For the reasons below, I find that the time limit is mandatory and jurisdictional, and accordingly, that the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against Cinray on November 5, 2010, arising out of work performed by Cinray. DLSE served the Assessment that same date and it was received by Cinray on November 6, 2010. Cinray filed its Request for Review on March 23, 2011, more than 60 days after the Assessment was issued.

On January 27, 2011, DLSE requested that the Clerk of the Superior Court for the County of Contra Costa enter judgment on the Assessment in accordance with section 1742, subdivision (a). Judgment was entered by the Superior Court on January 28, 2011, in favor of DLSE and

¹ All statutory references are to the California Labor Code unless otherwise specified.

against Cinray for the full amount of the Assessment, including penalties, plus interest and liquidated damages. The record is devoid of evidence that Cinray successfully had the judgment vacated.

On June 2, 2011, the Hearing Officer issued the OSC, stating in relevant part:

The Motion seeks to have Cinray's Request for Review dismissed as untimely under Labor Code section 1742(a). Cinray shall have to and including **June 17, 2011**, in which to file a written response to the Motion showing good cause why its Request for Review should not be dismissed as untimely. If no response is received, the Motion will be taken under submission. (Emphasis in original.)

Cinray has filed no response to the OSC.

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." (*Id.*)³ Once the assessment becomes final, a certified copy may be filed by DLSE with the clerk of the appropriate superior court, who, upon filing, "shall enter judgment against the person assessed in the amount shown on the certified order." (§ 1742(d).)

The last day that Cinray could have timely requested review of the Assessment was January 10, 2011. The Assessment became final on January 11, 2011. Judgment was entered on the "final order" on January 28, 2011. Once judgment was entered on the final order, exclusive jurisdiction to challenge the Assessment lies with the courts, and the Director is without jurisdiction to hear the Request for Review.⁴

² Since Labor Code section 1741(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 also 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* Rule 03(a) [Cal. Code Regs., tit. 8, §17203(a).]

³ Rule 22(a) restates the 60-day filing requirement and expressly provides that "Failure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules."

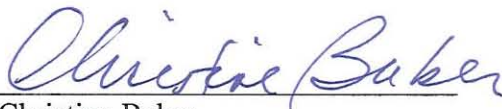
⁴ See Rule 25(c) [Cal. Code Regs. tit. 8, § 17225, subd. (c)], which provides: "Notwithstanding any application or showing made under subpart (b) of this Rule neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment . . . has become final and entered as a court judgment."

FINDINGS and ORDER

1. Cinray did not timely request review of a November 5, 2010, Civil Wage and Penalty Assessment issued by the Labor Commissioner.
2. The Assessment became a final order on January 11, 2011.
3. Judgment was entered on the Assessment on January 28, 2011.
4. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Cinray.

Cinray's Request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 6/30, 2011


Christine Baker
Acting Director of Industrial Relations