

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

FSH Enterprises d/b/a Enviroscope
Constructors

Petitioner

SBA No. BDP-289

Decided: July 17, 2008

ORDER DISMISSING UNTIMELY APPEAL

On June 23, 2008, FSH Enterprises d/b/a Enviroscope Constructors (Petitioner) appealed the March 3, 2008, determination of Respondent Small Business Administration (SBA) terminating Petitioner from the 8(a) Business Development (BD) program (SBA Determination). *See* 13 C.F.R. Parts 124 & 134.

The appeal does not state when Petitioner received the SBA Determination other than to say that the SBA Determination, sent by certified mail, was recently brought to Petitioner's attention and "was only found due to the tenants in suite 106 moved out of this suite."¹

On June 24, 2008, I ordered Petitioner to show cause why its appeal petition should not be dismissed as untimely. *See* 13 C.F.R. §134.405(a)(2).

Petitioner timely responded to the Order to Show Cause on June 30, 2008. Petitioner states that a shared receptionist for one hundred office suites signs all certified mail receipts. This receptionist also has the responsibility to place the mail in the correct office suite mailbox. The receptionist placed the SBA Determination in Suite 106's mailbox, Petitioner's former suite number, and the Determination was not discovered until the tenants of Suite 106 moved.

The SBA Determination was sent by certified mail (7005 0390 0002 6141 4558) to Petitioner's address at 6909 W. Ray Road, Suite #106, Chandler, Arizona 85226. The Determination was delivered at that address on March 24, 2008. *See* United States Post Office Track & Confirm, *available at* <http://trkcnfrm1.smi.usps.com/PTSIInternetWeb/InterLabelInquiry.do> (all Internet materials as visited July 9, 2008, and available in SBA's Office of Hearings and Appeals case file). Petitioner filed its appeal on June 23, 2008. Accordingly, Petitioner filed its appeal more than 45 days after delivery of the SBA Determination.

¹ Petitioner did explain that it never received SBA's December 12, 2007 letter of intent to terminate because Petitioner's receptionist delivered the letter to Petitioner's former office suite.

An 8(a) program appeal must be filed within 45 days of receipt of the SBA determination. 13 C.F.R. § 124.206(c). Petitioner's owner's June 23, 2008 appeal claimed he "recently" received the SBA Determination due to Petitioner's shared receptionist placing the Determination in Petitioner's former office suite mailbox.

The issue here is whether the receipt of the SBA Determination at Petitioner's address is sufficient to start the appeal deadline clock running. Petitioner does not state whether it advised the SBA of its new suite number. Regardless, the SBA sent its Determination to Petitioner's last known address. The Supreme Court has held that the government satisfies the Due Process Clause's notice requirements when it sends notice of an impending property sale via certified mail and there is no indication that delivery was unsuccessful, *i.e.*, the letter is not returned undeliverable. *See Jones v. Flowers*, 547 U.S. 220, 238 (2006). Similarly, I find that service is complete when the SBA determination is successfully delivered by certified mail to the most current address of the recipient. Petitioner bears the responsibility for its administrative staff to successfully handle and distribute the mail after signing for it.

Accordingly, I conclude Petitioner "received" the SBA's determination when it was delivered to Petitioner's address and signed for by Petitioner's shared receptionist on March 24, 2008. Thus, Petitioner untimely filed its appeal on June 23, 2008, more than 45 days after receipt of the SBA Determination.

There is no jurisdiction to decide an untimely 8(a) program appeal, 13 C.F.R. § 134.405(a)(2), and it must be dismissed. Further, the 45-day time limit may not be extended or modified because it is established by statute. Small Business Act, § 8(a)(9)(E)(ii), 15 U.S.C. § 637(a)(9)(E)(ii); *see also* 13 C.F.R. § 134.103(b). Accordingly, regardless of any mitigating circumstances, the appeal must be dismissed because it is untimely.

Accordingly, the untimely appeal is DISMISSED.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* Small Business Act, § 8(a)(9)(D), 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

RICHARD S. ARKOW
Administrative Law Judge