

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

IN THE MATTER OF:

DRM International, Inc.

Petitioner

SBA No. BDP-352

Decided: May 24, 2010

**ORDER DISMISSING UNTIMELY APPEAL**

On March 2, 2010, DRM International, Inc. (Petitioner) appealed the January 7, 2010 determination of the Small Business Administration (SBA) terminating Petitioner from the 8(a) Business Development (BD) program. *See* 13 C.F.R. Parts 124 & 134. Petitioner's appeal states the SBA determination was received on or after January 16, 2010.

On April 26, 2010, SBA moved to dismiss for lack of jurisdiction because the appeal was not timely filed in accordance with 13 C.F.R. § 134.202. SBA states Petitioner had forty-five days after receipt of SBA's determination to appeal and cites 13 C.F.R. § 124.304(e) and 13 C.F.R. § 134.202(a)(1). SBA asserts Petitioner received SBA's determination on January 14, 2010 and Petitioner filed its appeal forty-seven days later on March 2, 2010. Petitioner states 13 C.F.R. § 134.405(a) requires an administrative law judge to decline to accept jurisdiction over any matter if the appeal is untimely.

On May 4, 2010, Petitioner filed an opposition to SBA's motion, a memorandum of points and authorities in support of opposition, and an affidavit of Arnold Young, Petitioner's president. Petitioner asserts it did not receive actual notice of the final SBA determination until "well after January 15, 2010" and its appeal is timely. Petitioner states Petitioner did not receive the SBA's determination until January 25, 2010 because its president was on business travel. Additionally, Petitioner argues SBA miscounted the days and notes SBA has not provided a certified mail return receipt for the determination.

The SBA determination was sent by certified mail (7008 1300 0001 7334 2087) to Petitioner. The SBA determination was successfully delivered to Petitioner at 10:59am on January 14, 2010. *See* United States Postal Service Track & Confirm, *available at* [www.usps.com](http://www.usps.com) (all internet materials as visited April 29, 2010 and available in SBA's Office of Hearings and Appeals case file). Petitioner filed its appeal on March 2, 2010. Accordingly, Petitioner filed its appeal more than forty-five days after delivery of the SBA determination.

An 8(a) BD program appeal must be filed within forty-five days of receipt of the SBA determination. 13 C.F.R. § 124.304(e). Petitioner's owner's argues he did not receive SBA's determination until he returned to the office after business travel on January 25, 2010.

The issue here is whether the receipt of the SBA determination at Petitioner's address is sufficient to start the appeal deadline clock running. The Supreme Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). In *Dusenbery v. United States* the government attempted to provide notice via certified mail and heard nothing back indicating that anything had gone awry; the Supreme Court noted that it had not required actual notice in similar proceedings and allowed the government to defend the "reasonableness and hence the constitutional validity of any chosen method ... on the ground that it is in itself reasonably certain to inform those affected." *Dusenbery*, 534 U.S. at 170 (quoting *Mullane*, 339 U.S. at 315).

Similarly, in this case the SBA provided notice to Petitioner via certified mail, a method reasonably certain to inform those affected, and there was no indication that delivery was unsuccessful, *i.e.*, the letter returned as undeliverable. *See Jones v. Flowers*, 547 U.S. 220, 238 (2006). Accordingly, I find that service is complete when the SBA determination is successfully delivered by certified mail to the current address of the recipient. *See Matter of FSH Enterprises*, SBA No. BDP-289 (2008). Petitioner bears the responsibility for ensuring the mail receives the attention it deserves and is directed to the appropriate employee.

Accordingly, I conclude Petitioner "received" the SBA's determination when it was delivered to Petitioner's address on January 14, 2010. Thus, Petitioner untimely filed its appeal on March 2, 2010, more than forty-five days after receipt of the SBA determination.

There is no jurisdiction to decide an untimely 8(a) BD program appeal, 13 C.F.R. § 134.405(a)(2), and it must be dismissed. Further, the forty-five-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, the appeal must be DISMISSED because it is untimely.

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).

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BRENDA P. MURRAY  
Administrative Law Judge