

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

SIZE APPEAL OF:

Industria Lechera De Puerto Rico, Inc.,

Appellant,

PFR of SIZ-5533

SBA No. SIZ-5537

Decided: March 11, 2014

ORDER DISMISSING PETITION FOR RECONSIDERATION

On February 6, 2014, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) issued its decision in *Size Appeal of Industria Lechera de Puerto Rico, Inc.*, SBA No. SIZ-5533 (2014). On February 26, 2014, at 5:58 p.m. eastern time, OHA received a petition for reconsideration (PFR) from Industria Lechera de Puerto Rico, Inc. (Petitioner).

By regulation, a PFR must be filed within 20 days of service of the written decision. 13 C.F.R. § 134.227(c). The regulations further state that “[t]he date of filing is the date the submission is received at OHA. Any submission received at OHA after 5 p.m. eastern time is considered filed the next business day.” *Id.* § 134.204(b)(2). In this case, because the PFR was received at OHA after 5 p.m. eastern time on the twentieth day, the PFR appeared untimely. OHA therefore ordered Petitioner to show cause why the PFR should not be dismissed as untimely.

Petitioner responded to the order on March 7, 2014. Petitioner asserts that it misinterpreted the regulations governing filing and service. (Response at 2.) Should OHA reject this explanation, Petitioner requests that OHA reopen the matter on its own initiative pursuant to 13 C.F.R. § 134.227(c).

I see no reason to reconsider OHA's decision in *Size Appeal of Industria Lechera de Puerto Rico, Inc.*, SBA No. SIZ-5533 (2014). OHA has explained that “[a] PFR must be based upon manifest error of law or mistake of fact, and is not intended to provide an additional opportunity for an unsuccessful party to argue its case before OHA.” *Size Appeal of AudioEye, Inc.*, SBA No. SIZ-5493, at 3 (2013) (PFR); *Size Appeal of Trailboss Enters., Inc.*, SBA No. SIZ-5450, at 2 (2013) (PFR). Furthermore, a PFR is appropriate only in limited circumstances, such as situations where OHA has misunderstood a party, or has made a decision outside the adversarial issues presented by the parties. *Size Appeal of Chu & Gassman, Inc.*, SBA No. SIZ-5394, at 7-8 (2012) (PFR). Such circumstances are not present in this case. Rather, the PFR reiterates arguments already raised and considered in the prior decision, and thus does not state valid grounds for reconsideration.

In addition, as Petitioner itself concedes, the PFR is untimely. OHA will dismiss a PFR filed beyond the 20-day deadline. *E.g., Matter of Teamus Constr. Co., Inc.*, SBA No. VET-148 (2009) (PFR) (dismissing PFR filed one day after deadline). Petitioner's contention that it confused the regulations governing filing and service is also unavailing. OHA will not apply a regulation contrary to its plain terms to accommodate a party that has misread or misunderstood it. *Size Appeals of NSR Solutions, Inc. and Kaegan Corp.*, SBA No. SIZ-4859, at 7 (2007).

For these reasons, the PFR is dismissed.

KENNETH M. HYDE
Administrative Judge