

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

SIZE APPEAL OF:

Red Orange North America, Inc.,

Appellant,

Appealed From
Size Determination No. 2-2020-059

SBA No. SIZ-6121

Decided: September 20, 2021

ORDER DISMISSING APPEAL¹

I. Background

On August 17, 2021, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 2-2020-059, finding that Red Orange North America, Inc. (Appellant) is not a small business under the applicable size standard. The Area Office transmitted a copy of the size determination to a representative of Appellant, Mr. Christopher Gross, by e-mail that same day. On September 3, 2021, SBA's Office of Hearings and Appeals (OHA) received the above-captioned appeal.

On September 8, 2021, OHA issued a Show Cause Order directing Appellant to show cause, no later than September 15, 2021, as to why its appeal should not be dismissed as untimely or as non-compliant with OHA's rules. OHA also contacted the Area Office to inquire about the timing and points-of-contact associated with the appeal. The Area Office confirmed that Appellant's President, Mr. Lalith John Paulus, emailed the Area Office on September 18, 2021, with questions about the matter, demonstrating that Appellant was clearly in receipt of the size determination.

To date, Appellant has not responded to the Show Cause Order.

II. Analysis

The instant appeal is untimely and fails to comply with OHA regulations. Therefore, I must dismiss it.

¹ OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 et seq., and 13 C.F.R. parts 121 and 134.

A size appeal must be filed within 15 calendar days after receipt of the size determination. 13 C.F.R. § 134.304(a). Specifically, given that a representative of Appellant apparently received the size determination on August 17, 2021, any appeal would have been due by September 1, 2021. In the appeal, Appellant highlights that the size determination was not transmitted directly to Appellant's preferred points-of-contact, and requests to be excused for its lack of timeliness as a result. (Appeal, at 1.) OHA, however, lacks authority to modify or extend the deadline for filing an appeal. 13 C.F.R. § 134.202(d)(2). Additionally, the email correspondence between the Area Office and Mr. Lalith John Paulus, President of Appellant, clearly demonstrates that Appellant received the size determination by August 18, 2021.

The appeal is also deficient in two other respects. First, a corporation may be represented in an appeal before OHA only by an attorney or an officer of the corporation. 13 C.F.R. § 134.208. Here, the individual who submitted the appeal, Mr. Matthew O'Connor, is identified as “Specialist — Key Accounts” but not as an attorney for or an officer of Appellant. (Appeal, at 5.) Second, OHA's rules of procedures require that “[e]very written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney.” 13 C.F.R. § 134.209. The instant appeal, however, is not signed.

III. Conclusion

For the above reasons, the appeal is DISMISSED as untimely and for failure to comply with OHA's regulations.

CHRISTOPHER HOLLEMAN
Administrative Judge