

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

THE BOTTLE SHOP LLC dba MALT &
VINE and DOUGLAS ENGLER,

APPELLANTS,

Citation and Notice of Assessment No.
W-584-17, W-585-17

OAH Docket No. 08-2017-LI-00525

NO. 2018-005-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the petition for administrative review filed by Bottle Shop and Douglas Engler (the Appellants) regarding the Order Dismissing Appeal, with the Director's Office and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The parties in this matter are the Department of Labor & Industries and the Appellants.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Order Dismissing Appeal on September 20, 2017 by first class mail and certified mail.

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2. The Office of Administrative Hearings mailed the Initial Order to the address of record of the Appellants.
3. On September 29, 2017, the Office of Administrative Hearings received a request for reconsideration from the Appellants. The Appellants filed this request nine days after the Office of Administrative Hearings served the Order Dismissing Appeal.
4. On October 26, 2017, the Director's Office received the petition for administrative review. The Appellants filed this 36 days after the Office of Administrative Hearings served the Order Dismissing Appeal.

II. CONCLUSIONS OF LAW

1. RCW 49.48.084(3) provides, "Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order."
2. The Appellants did not file a request to vacate the Order Dismissing Appeal within seven days of the Order Dismissing Appeal as required by RCW 34.05.440(3), and his request was untimely. To calculate the due dates, all calendar days are counted.
3. The Appellants did not file his petition for administrative review within the time specified by RCW 49.48.084(3) and his petition is untimely.
4. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal." Because the petition is untimely, the Initial Order became the final agency decision and there is no authority to review the Initial Order under RCW 49.48.084 and RCW 34.05.
5. The Director does not have the authority to consider the Appellants' constitutional arguments. *Bare v. Gorton*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).
6. The appeal is dismissed.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the petition for administrative review is dismissed and the Order Dismissing Appeal is the final agency order.

DATED at Tumwater this 23 day of February, 2018.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides: "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 23 day of February 2018, to the following via U.S. Mail, postage prepaid.

Douglas Engler
Bottle Shop LLC
16851 Redmond Way
Redmond, WA 98052

Heather Leibowitz
Attorney General's Office
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Anastasia Logan
201 119th Ave SE
Lake Stevens, WA 98258

Zachary Altenhofen
201 119th Ave SE
Lake Stevens, WA 98258

DATED this 23 day of February, at Tumwater, Washington.

A handwritten signature in blue ink that reads "Lisa Rodriguez" is written over a horizontal line.