

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

In re:

AASTHA INC. dba SEATTLE  
PRINTING AND RAJESH MALHOTRA

APPELLANT,

Citation and Notice of Assessment No. W-  
007-19

OAH Docket No. 11-2018-LI-00905

2019-008-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 Order Dismissing Appeal - Default (Order) served on November 28, 2018, having considered the petition for review filed by Aastha Inc. dba Seattle Printing and Rajesh Malhotra (Appellant) with the Director's Office, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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

**I. FINDINGS OF FACT**

1. On July 9, 2018, the Department issued a Citation and Notice of Assessment to the Appellant. The Appellant appealed, and the matter was referred to the Office of Administrative

Hearings. Rajesh Malhotra wrote a three-page letter in English about the appeal, listed his address as “8141 – 229<sup>th</sup> Dr. NE, Redmond WA 98053,” and indicated this address was valid.

2. On November 7, 2018, the Office of Administrative Hearings sent notice of a pre-hearing conference scheduled for November 27, 2018, at 11 p.m. The notice advised the Appellant: “If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).” (emphasis omitted). This letter was sent to the address listed in the appeal and was not returned to OAH.

3. On November 27, 2018, the Appellant failed to appear.

4. The Office of Administrative Hearings issued and served the Order dismissing the appeal on November 28, 2019.

5. On December 14, 2018, the Director received a timely filed petition for administrative review from Appellant. Mr. Malhotra claimed in an email written in English that he did not receive notice of the conference.

6. On April 22, 2019, an attorney on Mr. Malhotra’s behalf asked for leniency because “[m]y client does not understand English.”

7. The Department of Labor & Industries responded, arguing that although failure to understand English may be a ground for good cause, here the circumstances showed that Mr. Malhotra understood English sufficiently well to defend against the citation.

## II. CONCLUSIONS OF LAW

1. Based on the Appellant’s timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . , the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.”

3. A default order may be set aside if the appellant shows good cause for missing a scheduling conference. The Appellant raises two arguments: (1) he did not receive the scheduling order and (2) he does not speak English. The circumstances demonstrate that it is not credible that he did not receive the notice. The scheduling order was sent to the address he provided and was not returned to OAH. And his claim that he did not understand the order is contradicted by the Appellant's own communications in English. There is no indication that someone else assisted him with preparing these communications.

4. The Appellant does not show good cause for missing the scheduling conference.

### III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment is AFFIRMED.

DATED at Tumwater, Washington this 19 day of July, 2019.

  
\_\_\_\_\_  
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 emailing it to [directorappeal@lni.wa.gov](mailto:directorappeal@lni.wa.gov) or 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 Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 19 day of July 2019, to the following via regular mail, postage prepaid.

Rand Koler  
Rand Koler & Associates, P.S.  
5812 46<sup>th</sup> Avenue  
Seattle, WA 98118

Rebecca Echols, AAG  
Attorney General's Office  
800 Fifth Avenue, Ste. 2000  
Seattle, WA 98104

Rajesh Malhotra  
Aastha, Inc. dba Seattle Printing  
8141 229<sup>th</sup> Drive NE  
Redmond, WA 98053

DATED this 19 day of July, 2019, at Tumwater, Washington.

  
\_\_\_\_\_  
Lisa Deck