

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of the Appeal of the Audit  
Involving:

OAH No. 2012101161

HOME OWNERSHIP MADE EASY,

Appellant,

vs.

DEPARTMENT OF DEVELOPMENTAL  
SERVICES,

Respondent.

PROPOSED DECISION  
DISMISSING REQUEST FOR FORMAL HEARING AND APPEAL

On March 1, 2013, Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided at a motion hearing in this matter at Los Angeles, California.

Michael E. McCreary, Attorney at Law, of Soltman, Levitt, Flaherty & Wattles, LLP, represented appellant Home Ownership Made Easy (Home).

Louise Burda Gilbert, Senior Staff Counsel, represented respondent Department of Developmental Services (Department).

On February 11, 2013, the Department filed a motion to dismiss Home's request for formal hearing and appeal; the motion was marked as Exhibit 1. On February 15, 2013, Home filed its opposition to the Department's motion; the opposition was marked as Exhibit A. On February 27, 2013, the Department filed a reply in support of its motion; the reply was marked as Exhibit 2.

In its motion, the Department argued that Home's Request for Formal Hearing, submitted by Home's current counsel, was mailed on September 27, 2012, more than 30 days after the Department's review officer issued a Letter of Findings on August 8, 2012 (which was received by Home's prior counsel on August 24,

2012). It is, therefore, untimely under California Code of Regulations (CCR), title 17, section 50750, subdivision (b).

Additionally, the Department argued that Home's September 27, 2012, Request for Formal Hearing did not specify each audit finding being protested, did not set forth all of Home's contentions or estimate the dollar amount of each finding being appealed, and did not attach all documents on which Home intended to rely, all in violation of CCR, title 17, section 50730, subdivision (c). Nor were documents that Home's current counsel sent to the Department on October 24, 2012, previously submitted to the review officer at the administrative review, in violation of CCR, title 17, section 50730, subdivision (f). The Department argued that these requirements are applicable to requests for review under CCR, title 17, section 50750, citing CCR, title 17, section 50750, subdivision (e).

The Department further argued that it has been prejudiced in that it had to file a Position Statement within 30 days of receipt of Home's September 27, 2012, letter, without the benefit of any detailed information about or documentation of Home's contentions. Home's Statement of Disputed Issues was not sent to the Department until November 8, 2012, 77 days after the findings were issued by the Department's review officer on August 22, 2012, and documents in support of Home's contentions were created after the audit.

Home argued that there was good cause for its delay in submitting a Request for Formal Hearing, in that Home's prior law firm waited nearly two weeks to notify Home of its receipt of the review officer's Letter of Findings. Home then admittedly waited six days after receiving the Letter of Findings from counsel before it submitted a claim to its insurer. But it took an additional two weeks for Home's insurer to retain counsel to represent Home, which it did on September 26, 2012. Current counsel promptly filed Home's Request for Formal Hearing the next day.

Home also argued that the deadline for making a Request for Formal Hearing should be extended by five days, as would be the case if Code of Civil Procedure section 1013 applied to these cases.

Finally, Home argued that respondent has suffered no prejudice.

Briefs having been received and oral argument heard, **it is hereby ordered** that respondent's motion to dismiss appellant's request for formal hearing and appeal is granted, on the following grounds and as more specifically stated on the record at hearing:

Home's Request for Formal Hearing was untimely and lacked the specificity required by CCR, title 17, sections 50750 and 50730. Home has not established that good cause exists either for its delay or for its insufficiently specific request. Further, the Department has been prejudiced by Home's untimely and piecemeal submissions. Finally, Home does not cite any authority to support its position that Code of Civil

Procedure section 1013 should apply to extend the deadline for filing a Request for Formal Hearing.

ORDER

The Department's motion to dismiss is granted. The request of Home Ownership Made Easy for formal hearing and appeal is dismissed.

DATED: March 4, 2013

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HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings