

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000691-001 DT
CV 2010-054353

03/21/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

CIE ANN SCOTT
AARON M SCOTT
REGISTRAR OF CONTRACTORS AN
AGENCY OF THE STATE OF AR

CIE ANN SCOTT
11811 N TATUM BLVD STE 3031
PHOENIX AZ 85028
AARON M SCOTT
11811 N TATUM BLVD STE 3031
PHOENIX AZ 85028
ELIZABETH A CAMPBELL

v.

APPLECREEK GENERAL CONTRACTORS L
L C (001)

JOSEPH M O'CONNOR

JUDGE MCVEY
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

APPEAL DISMISSED / REMAND

Defendant-Appellee Applecreek General Contractors LLC (Applecreek) has filed a Motion To Dismiss contending Plaintiff-Appellant Cie Ann Scott et al. (Scott) did not file her Complaint for Review of Administrative Decision within the required time limits, and thus contends this Court does not have jurisdiction in this matter. Scott has also filed a Motion To Combine LC2011-000691 with Cause Number CV2010-054353. For the following reasons, this Court concludes it does not have jurisdiction in LC2011-000691 and thus grants Applecreek's Motion To Dismiss. In light of the dismissal of LC2011-000691, Scott's Motion To Combine is moot.

I. FACTUAL BACKGROUND.

On September 9, 2011, Administrative Law Judge Brian Brendan Tully issued his Findings of Fact and Conclusions of Law, Decision, and Recommended Order in No. 2010A-308474188-ROC. On September 15, 2011, the Arizona Registrar of Contractors (AzROC), through Staff Attorney Amy B. McGaw, issued his Order adopting the ALJ's Findings of Fact and Conclusions of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000691-001 DT
CV 2010-054353

03/21/2012

Law, and ordered Applecreek's License be revoked. That September 15, 2011, Order stated the revocation would become effective October 25, 2011, and any appeal to the Superior Court must be filed on or before the effective date of October 25, 2011. On October 31, 2011, Scott filed her Complaint—Limited Review and Appeal of Administrative Decision by the Arizona Registrar of Contractors.

II. ISSUE: DOES THIS COURT HAVE JURISDICTION IN THIS APPEAL.

Applecreek contends this Court does not have jurisdiction in this appeal. The applicable Arizona statute provides as follows:

An action to review a final administrative decision shall be commenced by filing a complaint within 35 days from the date when a copy of the decision sought to be reviewed is served upon the party affected. . . . Service is complete on personal service or 5 days after the date that the final administrative decision is mailed to the party's last known address.

A.R.S. § 12-904(A). Because the final administrative decision in this matter was the September 15, 2011, Order, the Complaint had to be filed 40 days later, which was the October 25, 2011, date stated in that Order.

In the present matter, Scott filed her Complaint on October 31, 2011. The Arizona courts have held the time limits prescribed for an appeal from an administrative agency are jurisdictional. *Arizona Corp. Comm'n v. Catalina Foothills Estates*, 78 Ariz. 245, 250, 278 P.2d 427, 430 (1954); *Bolser Ent. Inc. v. Arizona R.O.C.*, 213 Ariz. 110, 139 P.3d 1286, ¶ 16 (Ct. App. 2006); *Guminski v. Arizona St. Vet. Med. Exam. Bd.*, 201 Ariz. 180, 33 P.3d 514, ¶ 8 (Ct. App. 2001); *Thielking v. Kirschner*, 176 Ariz. 154, 156, 859 P.2d 777, 779 (Ct. App. 1993); *Smith v. Arizona D.O.C.*, 135 Ariz. 160, 162, 659 P.2d 1305, 1307 (Ct. App. 1982); *State ex rel. Dandoy v. City of Phoenix*, 133 Ariz. 334, 337, 651 P.2d 862, 865 (Ct. App. 1982); *Pesqueira v. Pima County Assessor*, 133 Ariz. 255, 257, 650 P.2d 1237, 1239 (Ct. App. 1982); *Hurst v. Bisbee U.S.D.*, 125 Ariz. 72, 74, 607 P.2d 391, 393 (Ct. App. 1979); *Arizona D.E.S. v. Holland*, 120 Ariz. 371, 372, 586 P.2d 216, 217 (Ct. App. 1978). This Court therefore concludes, because Scott filed her Complaint beyond the 40-day period allowed for administrative appeals, this Court does not have jurisdiction and must dismiss this matter.

Scott contends Rule 13 of the Rules of Procedure for Judicial Review of Administrative Decisions allows this Court to extend time limits. That Rule would allow this Court to extend time limits provided in the Rules of Procedure, but it does not give this Court authority to extend time limits provided in the Arizona Revised Statutes. Moreover, Rule 13 applies only after a Superior Court has obtained jurisdiction; it does not give the Superior Court the authority to grant itself jurisdiction it never obtained in the first place.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000691-001 DT
CV 2010-054353

03/21/2012

III. CONCLUSION.

Based on the foregoing, this Court concludes it does not have jurisdiction to consider Scott's appeal, and thus must grant Applecreek's Motion To Dismiss. In light of this dismissal of LC2011-000691, Scott's Motion To Combine LC2011-000691 with Cause Number CV 2010-054353 is moot. This Court further determines there is no just reason to delay entry of judgment.

IT IS THEREFORE ORDERED granting Applecreek's Motion To Dismiss.

IT IS FURTHER ORDERED dismissing Scott's appeal in LC2011-000691.

IT IS FURTHER ORDERED dismissing as moot Scott's Motion To Combine LC2011-000691 with Cause Number CV 2010-054353.

IT IS FURTHER ORDERED remanding this matter to the Arizona Registrar of Contractors.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

032120120810