

FILED  
LORAIN COUNTY

2014 MAR 19 A 8:59

CLERK OF COMMON PLEAS  
RON NABAKOWSKI

ROI COMMERCE, LLC,

Appellant,

vs.

DIRECTOR, OHIO DEPARTMENT  
OF JOB AND FAMILY SERVICES,

and

MICHELLE DILLEN,

Appellees.

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

TO THE CLERK: THIS IS A FINAL  
APPEALABLE ORDER  
PLEASE SERVE UPON ALL PARTIES NOT IN  
DEFAULT FOR FAILURE TO APPEAR,  
NOTICE OF THE JUDGMENT AND  
ITS DATE OF ENTRY UPON THE JOURNAL.

CASE NO. 13-CV-181665

JUDGE MARK A. BETLESKI

**FINAL JUDGMENT ENTRY OF DISMISSAL**

This case came on for consideration pursuant to the *Motion to Dismiss* filed by Appellee, Ohio Department of Job and Family Services (ODJFS), on December 13, 2013. This case arises as a statutory unemployment compensation appeal filed by Appellant, ROI Commerce, LLC (ROI), on October 4, 2013 under R.C. 4141.282. ROI appeals from the *Decision* of the Unemployment Compensation Review Commission (UCRC) dated September 20, 2013 that dismissed its untimely *Request for Review* of the *Decision* of the UCRC dated July 26, 2013 on the basis that its *Request for Review* was untimely filed under R.C. 4141.281(C)(3) and R.C. 4141.281(D)(9). For the record, the final *Decision* of the UCRC dated September 20, 2013 that dismissed ROI's untimely appeal effectively affirmed the prior *Decision* of the UCRC dated July 26, 2013 that held that Appellee, Michelle Dillen (Dillen), was eligible for unemployment benefits pursuant to R.C. 4141.29 and O.A.C. 4141-3-05(B) with respect to her separation from employment at ROI.

As a preliminary matter, R.C. 4141.282(A) provides as follows regarding the jurisdictional requirement that a notice of appeal shall be filed in the common pleas court within thirty (30) days after the final decision of the UCRC has been sent to the parties:

**R.C. 4141.282(A) // THIRTY-DAY DEADLINE FOR APPEAL**

Any interested party, within thirty days after written notice of the final decision of the unemployment compensation UCRC was sent to all interested parties, may appeal the decision of the commission to the court of common pleas.

On September 20, 2013, a final *Decision* was issued by the UCRC that dismissed ROI's *Request for Review* of the *Decision* of the UCRC dated July 26, 2013 for lack of jurisdiction under R.C. 4141.281(C)(3) because the *Request for Review* was *untimely filed* by ROI in violation of R.C. 4141.281(C)(3) and ROI failed to present sufficient evidence to excuse its untimely appeal under R.C. 4141.281(D)(9). Accordingly, the final *Decision* of the UCRC dated September 20, 2013 effectively affirmed the prior *Decision* of the UCRC dated July 26, 2013 that held that Dillen was eligible for unemployment benefits under R.C. 4141.29 and O.A.C. 4141-3-05(B) with respect to her separation from employment at ROI.

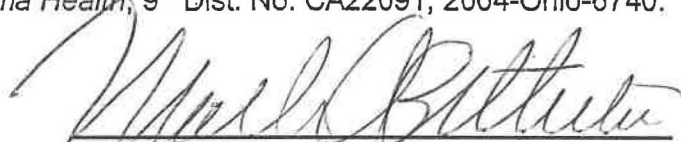
Pursuant to the statutory and jurisdictional appeal period of 30 days in R.C. 4141.282(A), ROI was legally required to file a valid *Notice of Appeal* of the final *Decision* of the UCRC dated *September 20, 2013* in the Lorain County Court of Common Pleas no later than *October 21, 2013*. See R.C. 4141.282(A). However, the Court hereby finds that ROI filed a legally defective *Notice of Appeal* in the Lorain County Common Pleas Court on October 4, 2013 in violation of R.C. 4705.01 and R.C. 4141.282 because ROI is an *Ohio corporation* and the *Notice of Appeal* was *not filed by a duly licensed attorney* admitted to practice law in Ohio and represent Ohio corporations in court under Ohio law. Specifically, the defective *Notice of Appeal* was filed in the Lorain County Court of Common Pleas on October 4, 2013 by the "*President*" of ROI (Fred Elabed), who happens to be an employee / officer of ROI and is *not a duly licensed attorney admitted to practice law in Ohio* and represent Ohio corporations in court under Ohio law. See R.C. 4705.01; *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App. 3d 203 (1992); *Union Savings Assn. v. Home Owners Aid*, 23 Ohio St. 2d 60 (1970). See R.C. 4705.01; *Disciplinary Counsel v. Givens*, 106 Ohio St. 3d 144, 2005-Ohio-4104; *Disciplinary Counsel v. Shrode*, 95 Ohio St. 3d 137, 2002-Ohio-1759; *Disciplinary Counsel v. Kafele*, 108 Ohio St. 3d 283, 2006-Ohio-904; *Geiger v. King*, 10<sup>th</sup> Dist. No. 04AP108, 158 Ohio App. 3d 288, 2004-Ohio-4227; *Molders, Inc. v. ODJFS* (July 19, 2010), Por. C.P. No. 10CV466, unreported; *Shearer Foods LLC v. ODJFS* (Mar. 27, 2009), War. C.P. No. 08CV72805, unreported; *R.E.A. Electric, Inc. v. ODJFS* (Aug. 18, 2003), Ham. C.P. No. A0304316, unreported; *Courtyard Cafe v. ODJFS* (Nov. 18, 2003), Ham. C.P. No. A0306220, unreported; *Wenmiddle LLC v. UCRC* (Apr. 16, 2013), Franklin C.P. No. 13CVF021306, unreported; *Fowler v. Summa Health Sys.*, 9<sup>th</sup> Dist. No. CA22091, 2004-Ohio-6740.

Based upon the foregoing, the Court hereby finds that this statutory unemployment appeal must be dismissed for lack of subject matter jurisdiction because ROI filed a legally defective *Notice of Appeal* in the Lorain County Court of Common Pleas on October 4, 2013 in violation of R.C. 4705.01 and R.C. 4141.282. Specifically, the *Notice of Appeal* filed by ROI in the Lorain County Common Pleas Court on October 4, 2013 under R.C. 4141.282 was legally defective and void under Ohio law because ROI is an *Ohio corporation* and the *Notice of Appeal* was *not filed by a licensed attorney* admitted to practice law *in Ohio* and represent Ohio corporations in court under Ohio law. See R.C. 4705.01; *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App. 3d 203 (1992); *Union Savings Assn. v. Home Owners Aid*, 23 Ohio St. 2d 60 (1970); *Disciplinary Counsel v. Givens*, 106 Ohio St. 3d 144, 2005-Ohio-4104; *Disciplinary Counsel v. Shrode*, 95 Ohio St. 3d 137, 2002-Ohio-1759; *Disciplinary Counsel v. Kafele*, 108 Ohio St. 3d 283, 2006-Ohio-904; *Geiger v. King*, 10<sup>th</sup> Dist. No. 04AP108, 158 Ohio App. 3d 288, 2004-Ohio-4227; *Molders, Inc. v. ODJFS* (July 19, 2010), Por. C.P. No. 10CV466, unreported; *Shearer Foods LLC v. ODJFS* (Mar. 27, 2009), War. C.P. No. 08CV72805, unreported; *R.E.A. Electric, Inc. v. ODJFS* (Aug. 18, 2003), Ham. C.P. No. A0304316, unreported; *Courtyard Cafe v. ODJFS* (Nov. 18, 2003), Ham. C.P. No. A0306220, unreported; *Wenmiddle LLC v. UCRC* (Apr. 16, 2013), Franklin C.P. No. 13CVF021306, unreported; *Fowler v. Summa Health*, 9<sup>th</sup> Dist. No. CA22091, 2004-Ohio-6740.

Finally, due to the fact that the *Notice of Appeal* filed by ROI on October 4, 2013 was *legally defective and void* under Ohio law, the Court hereby finds that this case must be dismissed with prejudice because the 30-day statutory appeal period *already expired on October 21, 2013* and any *Notice of Appeal* that might be filed by an attorney for ROI after October 21, 2013 would be *untimely filed* by ROI in violation of the mandatory jurisdictional requirements of R.C. 4141.282. See *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App. 3d 203 (1992); *Union Savings Assn. v. Home Owners Aid*, 23 Ohio St. 2d 60 (1970); *Disciplinary Counsel v. Givens*, 106 Ohio St. 3d 144, 2005-Ohio-4104; *Disciplinary Counsel v. Shrode*, 95 Ohio St. 3d 137, 2002-Ohio-1759; *Disciplinary Counsel v. Kafele*, 108 Ohio St. 3d 283, 2006-Ohio-904; *Geiger v. King*, 10<sup>th</sup> Dist. No. 04AP108, 158 Ohio App. 3d 288, 2004-Ohio-4227; *Molders, Inc. v. ODJFS* (July 19, 2010), Por. C.P. No. 10CV466, unreported; *Shearer Foods LLC v. ODJFS* (Mar. 27, 2009), War. C.P. No. 08CV72805, unreported; *R.E.A. Electric, Inc. v. ODJFS* (Aug. 18, 2003), Ham. C.P. No. A0304316, unreported; *Courtyard Cafe v. ODJFS* (Nov. 18, 2003), Ham. C.P. No. A0306220, unreported; *Wenmiddle LLC v. UCRC* (Apr. 16, 2013), Franklin C.P. No. 13CVF021306,

unreported; *Fowler v. Summa Health Sys.*, 9<sup>th</sup> Dist. No. CA22091, 2004-Ohio-6740.

Based upon the foregoing, the Court hereby GRANTS the *Motion to Dismiss* that was filed by Appellee ODJFS on December 13, 2013 and hereby ORDERS that this case be DISMISSED with prejudice for lack of subject matter jurisdiction because ROI filed a legally defective *Notice of Appeal* in the Lorain County Common Pleas Court on October 4, 2013 in violation of R.C. 4705.01 and R.C. 4141.282. See *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App. 3d 203 (1992); *Union Savings Assn. v. Home Owners Aid*, 23 Ohio St. 2d 60 (1970); *Disciplinary Counsel v. Givens*, 106 Ohio St. 3d 144, 2005-Ohio-4104; *Disciplinary Counsel v. Shrode*, 95 Ohio St. 3d 137, 2002-Ohio-1759; *Disciplinary Counsel v. Kafele*, 108 Ohio St. 3d 283, 2006-Ohio-904; *Geiger v. King*, 10<sup>th</sup> Dist. No. 04AP108, 158 Ohio App. 3d 288, 2004-Ohio-4227; *Molders, Inc. v. ODJFS* (July 19, 2010), Por. C.P. No. 10CV466, unreported; *Shearer Foods LLC v. ODJFS* (Mar. 27, 2009), War. C.P. No. 08CV72805, unreported; *R.E.A. Electric, Inc. v. ODJFS* (Aug. 18, 2003), Ham. C.P. No. A0304316, unreported; *Courtyard Cafe v. ODJFS* (Nov. 18, 2003), Ham. C.P. No. A0306220, unreported; *Wenmiddle LLC v. UCRC* (Apr. 16, 2013), Franklin C.P. No. 13CVF021306, unreported; *Fowler v. Summa Health*, 9<sup>th</sup> Dist. No. CA22091, 2004-Ohio-6740. Case closed. Costs to the Appellant.



JUDGE MARK A. BETLESKI

**NOTICE TO THE CLERK OF COURTS**

Pursuant to Civ. R. 58(B), the Lorain County Clerk of Courts shall serve notice of this *Final Judgment Entry of Dismissal* and its date of entry on the Journal upon all parties and/or counsel of record as follows:

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