

No. 1-14-1696

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COR DEVELOPMENT GROUP, INC.,)	Appeal from the
ALBERTO B. COLON AND ARTEMIO RIVERA,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellants,)	
)	
v.)	No. 13 CH 26882
)	
SECRETARY OF STATE, ILLINOIS SECURITIES)	
DEPARTMENT,)	Honorable
)	Diane J. Larsen,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* Where plaintiffs failed to meet the filing deadline for administrative review, the circuit court's order dismissing their complaint for lack of jurisdiction is affirmed.

¶ 2 One day, when faced with a filing deadline, can spell the difference between having your case heard and having your case halted. Plaintiffs, COR Development Group, Inc., Alberto Colon and Artemio Rivera, appeal from an order of the circuit court of Cook County dismissing their complaint for administrative review due to lack of jurisdiction because the complaint was

untimely filed. On appeal, plaintiffs contend that the dismissal must be reversed because the court had proper jurisdiction where their complaint was timely filed 35 days after they were served with the final administrative order by defendant, the Secretary of State, Illinois Securities Department. The dispositive issue in this case is whether defendant served plaintiffs with a copy of the final order on October 29 or October 30, 2013.

¶ 3 We affirm, finding that the record established that defendant served plaintiffs with copies of the final administrative order on October 29, the 36th day, one day after the due date.

¶ 4 Background

¶ 5 Documents contained in the record show that on October 29, 2013, defendant entered a final administrative order finding that plaintiffs had violated the Illinois Securities Law of 1953. Defendant permanently prohibited plaintiffs from offering or selling securities in or from the State of Illinois, and fined each plaintiff \$20,000 for fraud and failure to register securities.

¶ 6 On December 4, 2013, plaintiffs, through counsel, filed a complaint in the circuit court of Cook County for administrative review of defendant's October 29, 2013, order. On January 7, 2014, defendant moved to dismiss plaintiffs' complaint pursuant to section 2-619(a) (1) of the Code of Civil Procedure (735 ILCS 5/2-619(a) (1) (West 2014)) arguing that it was untimely filed, and therefore, that the circuit court lacked subject matter jurisdiction. Defendant argued that it served plaintiffs on October 29, 2013, by placing copies of the final administrative order addressed to each plaintiff in the United States mail. Defendant asserted that plaintiffs' deadline to file a complaint for administrative review was 35 days after they were served, which was December 3, 2013, and that their complaint filed on December 4, 2013, was one day late, and thus, untimely, requiring dismissal for lack of subject matter jurisdiction.

¶ 7 Defendant attached a copy of its final administrative order to the memorandum in support of its motion. Defendant also attached three sworn affidavits signed by one of its secretaries averring that she deposited copies of the order in the United States mail via certified mail on October 29, 2013. One affidavit stated that the order was sent to COR Development Group, Inc. at an address in Villa Park, IL; the second affidavit indicated that the order was sent to COR at an address in Hoffman Estates, IL; and the third affidavit stated that the order was sent to Alberto Colon in Elgin, IL. Each affidavit included a copy of the certified mail receipt indicating the recipient's name and address, and the unique tracking number for that specific envelope. Also attached were copies of the three envelopes sent to plaintiffs by defendant with the corresponding certified mail tracking number at the top of each envelope. The envelopes sent to COR in Villa Park and to Colon clearly show a postmark of October 29, 2013. The postmark on the copy of the envelope sent to COR in Hoffman Estates shows that it was sent in October, but is missing the end of the mark which indicated the date.

¶ 8 Defendant also attached affidavits from the same secretary indicating that on that same day she sent additional copies of the order via certified mail addressed to COR in Villa Park and Hoffman Estates, and placed these two envelopes in defendant's inter-office mail addressed to the Index Department. These affidavits also included copies of the certified mail receipts showing the two addresses for COR, and the certified mail tracking numbers for these two envelopes. Copies of these two envelopes show that they were mailed to COR on October 30, 2013. Both of the envelopes mailed to COR at the Villa Park address were returned to defendant by the United States Postal Service as "unclaimed," and both of the envelopes sent to COR at the Hoffman Estates address were returned to defendant marked "refused." The envelope sent to

Colon was returned to defendant with the notation "forward time exp." The record also includes a copy of a certified mail receipt for an envelope sent to Artemio Rivera at an address in Virginia that was signed at the time of delivery, with a delivery date of "11/2."

¶ 9 In response to defendant's motion to dismiss, plaintiffs denied that their complaint was untimely filed and that the court lacked subject matter jurisdiction. Plaintiffs argued that defendant served them with the final administrative decision on October 30, 2013, rather than October 29, and therefore, their complaint filed on December 4, 2013, was timely filed within 35 days after they were served. Plaintiffs asserted that "several" of defendant's affidavits indicated that the orders were deposited in inter-office mail rather than the United States mail. Plaintiffs further claimed that the certified mail receipts did not show a postmark or that the postage was prepaid as required by statute. Plaintiffs attached to their response copies of envelopes defendant sent to Artemio Rivera and to plaintiffs' counsel and claimed that these two envelopes showed postmarks of October 30, 2013; however, both copies are black and no trace of a postmark is visible on either envelope. Plaintiffs further claimed that these two postmarks were applied by a Pitney-Bowes postal meter, not the United States Postal Service, and because the date on such postal meters cannot be altered, the postage could not have been prepaid on October 29, 2013.

¶ 10 In reply, defendant argued that it mailed copies of the final order to plaintiffs in the United States mail, as required, on October 29, 2013, and explained that the copies sent to the Index Department through inter-office mail were duplicate copies required by the Securities Law (815 ILCS 5/10(A) (West 2012)), which the Index Department then mailed to plaintiffs on October 30, 2013. Defendant maintained that the fact that the Index Department mailed duplicate copies of the final order to plaintiffs on October 30 had no bearing on the fact that defendant had

mailed copies of the order to each plaintiff through the United States mail on October 29.

Defendant again attached copies of the same affidavits that were attached to its motion averring that it mailed copies of the order through the United States mail on October 29, 2013, to COR at addresses in Villa Park and Hoffman Estates, and to Colon in Elgin. A fourth affidavit showed that defendant also mailed a copy of the order through the United States mail on October 29, 2013, to Rivera in Virginia.

¶ 11 Defendant pointed out that the copy of the envelope sent to Rivera that was attached to plaintiffs' response, which plaintiffs claimed had a postmark of October 30, 2013, had a tracking number that was different from the tracking number on the certified mail receipt on defendant's affidavit, which showed that the order was mailed to Rivera on October 29. Defendant also argued that it was of no consequence that the order was mailed to plaintiffs' attorney on October 30 as it did not negate the fact that the order was properly mailed to each plaintiff on October 29. Accordingly, defendant maintained that plaintiffs filed their complaint one day late, that the trial court lacked subject matter jurisdiction, and that the only action the court could take was to dismiss plaintiffs' complaint.

¶ 12 Following a hearing on May 21, 2014, the circuit court granted defendant's motion to dismiss plaintiffs' complaint and dismissed the cause of action. The record does not contain a report of proceedings from that hearing.

¶ 13 Analysis

¶ 14 Plaintiffs contend that the dismissal must be reversed because the circuit court had proper jurisdiction where the complaint was timely filed 35 days after they were served with the final administrative order by defendant. The dispositive issue is whether defendant served plaintiffs

with copies of the final order on October 29 or October 30, 2013. Plaintiffs maintain that defendant's affidavits show that it placed the orders in inter-office mail, not in the United States mail as required. Plaintiffs also point out that the copies of the certified mail receipts do not show postmarks or that the postage was prepaid, and that the envelope sent to their attorney has a postmark of October 30, 2013, which was applied with a Pitney-Bowes postal meter, not stamped by the post office. In addition, plaintiffs contend that under Supreme Court Rule 11(a) (eff. July 1, 2013), service must be made on the attorney of record, and since their attorney was served on October 30, 2013, that is the official date of service.

¶ 15 Defendant responds that its affidavits and documentation prove proper service on October 29, 2013, by mailing each plaintiff a copy of the final order through the United States mail. Defendant asserts that plaintiffs' exhibits do not negate its evidence, and the fact that a copy of the order was sent to plaintiffs' attorney on October 30 has no bearing on the fact that plaintiffs were properly served on October 29. Defendant also argues that Supreme Court Rule 11 does not apply because that rule only applies after a complaint has been filed, and defendant was not required to serve plaintiffs' attorney.

¶ 16 Initially, we observe that plaintiffs attached to their reply brief printouts from the United States Postal Service's online tracking system that are not included in the record on appeal, and ask this court to review these documents in support of their argument. We are precluded from considering the information contained in these documents. None of them are properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003).

¶ 17 The Illinois Securities Law states that the Administrative Review Law (ARL) (735 ILCS 5/3-101 *et seq.* (West 2012)) applies to and governs every action for judicial review of a final decision issued by the Secretary of State under the Securities Law. 815 ILCS 5/11(H) (West 2012). The ARL expressly provides that a party must seek judicial review within the timeframe and manner provided in the statute, and a party which fails to comply with these provisions will be barred from obtaining judicial review of the administrative decision. 735 ILCS 5/3-102 (West 2012); *Nudell v. Forest Preserve District of Cook County*, 207 Ill. 2d 409, 413-14 (2003).

¶ 18 Section 3-103 of the ARL states that a complaint for judicial review of a final administrative decision must be filed within 35 days from the date that a copy of that decision was served on the affected party. 735 ILCS 5/3-103 (West 2012); *Nudell*, 207 Ill. 2d at 414. This section further provides:

"a decision shall be deemed to have been served either when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision at his or her last known residence or place of business." 735 ILCS 5/3-103 (West 2012).

The circuit court's ruling on a section 2-619(a) motion to dismiss a complaint is reviewed *de novo*. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 349 (2006).

¶ 19 The record contains four sworn affidavits signed by one of defendant's secretaries averring that she deposited copies of the final administrative order addressed to each individual plaintiff in the United States mail via certified mail on October 29, 2013. Attached to each affidavit were copies of the certified mail receipts indicating the individual tracking numbers for

each of the four envelopes. The envelopes mailed to COR at the Villa Park address and to Colon were returned to defendant as undeliverable, and copies of both of those envelopes show postmarks of October 29, 2013. We find that this evidence permits the circuit court to conclude that defendant served plaintiffs with the final administrative order on October 29, 2013.

¶ 20 We acknowledge that the record also contains envelopes addressed to plaintiffs with postmarks dated October 30, 2013. But, additional affidavits in the record show that the tracking numbers on these envelopes correspond to the copies of the order that were sent through defendant's inter-office mail to its Index Department on October 29, 2013. In its pleadings, defendant explained that these were duplicate copies of the order required by the Securities Law (815 ILCS 5/10(A) (West 2012)), and that the Index Department mailed these duplicate copies to plaintiffs on October 30, 2013. We agree with defendant that duplicate copies were mailed to plaintiffs on October 30, and that this does not negate the fact that the evidence in the record established October 29, 2013 as the date on which service was had on plaintiffs of the initial copies of the order.

¶ 21 In addition, plaintiffs' argument that under Supreme Court Rule 11 defendant must serve their attorney and service was on October 30, 2013, is rejected. Our supreme court expressly stated that "Supreme Court Rule 11 does not apply to service of an administrative agency decision in the context of section 3-103 of the Administrative Review Law." *Rodriguez*, 218 Ill. 2d at 353. The court explained that, at the time an agency decision is served, a complaint for administrative review has not yet been filed; therefore, the agency cannot be considered a litigant, and compliance with Rule 11 is not required. *Rodriguez*, 218 Ill. 2d at 54-55.

¶ 22 We find that the record shows that defendant served plaintiffs with copies of the final administrative order on October 29, 2013. Consequently, plaintiffs' complaint for administrative review, filed on December 4, 2013, was untimely, having been filed 36 days after the date of service. Due to plaintiffs' failure to comply with the 35-day time limit, the circuit court's finding that it lacked jurisdiction to consider the case was proper. *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 410 (2009).

¶ 23 We affirm the judgment of the circuit court of Cook County dismissing plaintiffs' complaint for lack of jurisdiction.

¶ 24 Affirmed.