

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

GEMTRONICS INC., and WILLIAM H. ISELY,)
Petitioners,)
v.) No. 11-1301
FEDERAL TRADE COMMISSION,)
Respondent.)

**RESPONDENT FEDERAL TRADE COMMISSION'S
REPLY IN FURTHER SUPPORT OF ITS MOTION TO DISMISS**

Although, in this proceeding, Mr. Isely is appearing *pro se*, he is nonetheless required to comply with the law. Indeed, it is well settled that *pro se* status is no license “not to comply with relevant rules of procedural and substantive law.” *United States v. West*, 877 F.2d 281, 287 (4th Cir. 1989), quoting *Faretta v. California*, 422 U.S. 806, 836 n.46 (1975); see *Liebig v. Kelley-Allee*, 923 F. Supp. 778, 780 (E.D.N.C. 1996) (“[a]lthough the court affords wide latitude to the manner and technique of *pro se* litigants’ pleadings, they are not entitled to disregard the duly enacted court rules of procedure and of evidence, or the law as enacted by Congress and interpreted by the federal courts”). Here, as explained in the Commission’s motion to dismiss, the law required Mr. Isely to file his petition for review within 30 days of the date on which the Commission denied his request for attorney’s fees. See

5 U.S.C. § 504(c)(2). Because he did not file his petition for review within that time, this proceeding must be dismissed.¹

In his response to the Commission's motion, Mr. Isely seeks a waiver of that requirement based on his contention that he was misinformed by the Clerk's Office of this Court as to when his petition for review was due. It may be that, when he contacted the Clerk's Office, he referred to the Commission's decision on his request for attorney's fees as a decision of a "lower court," as he does in his response to the Commission's motion to dismiss. If so, the Clerk's Office may have based its response on Fed. R. App. P. 4.² In any event, Mr. Isely's petition for attorney's fees, which he submitted to the Commission, specifically refers to that portion of the Commission's Rules of Procedure that governs requests for attorney's fees,

¹ In his Supplement to his response, Mr. Isely refers to 5 U.S.C. § 504(a)(2). That section prescribes the time within which a party must file with the agency its initial application for attorney's fees, and that time period is triggered by the final disposition of the adversary adjudication. However, that section is irrelevant to the determination of the time within which a petitioner may seek court review of the agency's denial of the initial application. The time for seeking such review is triggered by the agency's determination. Here, the Commission reached that determination on February 11, 2011.

² In his Supplement to his response, Mr. Isely specifically cites Fed. R. App. P. 4. However, that rule applies only to appeals from district court decisions. Review of a final decision of an administrative agency is governed by Fed. R. App. P. 15, which states that such review must be sought "within the time prescribed by law." Fed. R. App. P. 15(a)(1). In this case, the relevant law (5 U.S.C. § 504(c)) prescribes that a petition for review must be filed within 30 days.

16 C.F.R. § 3.81 *et seq.*³ Similarly, when he appealed the ALJ's denial to the Commission, he referred to those rules throughout his brief.⁴ Those rules make clear that judicial review of a Commission denial is governed by 5 U.S.C. § 504(c)(2). *See* 16 C.F.R. 3.83(i).⁵ This Court should not excuse his failure to comply with that statutory requirement. *See Bowles v. Russell*, 551 U.S. 205 (2007) (holding that failure to file a timely appeal was not excused by the fact that the petitioner had received misinformation from the court).

For the reasons set forth above, and in the Commission's motion to dismiss, the Commission requests that this Court dismiss the petition for review in this matter.

Respectfully submitted,

s/ Lawrence DeMille-Wagman
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³ <http://www.ftc.gov/os/adjpro/d9330/091202respapplicationforfees.pdf>.

⁴ <http://www.ftc.gov/os/adjpro/d9330/100611respinitialbrief.pdf>.

⁵ In fact, 16 C.F.R. § 3.83(i) contains a typographical error and refers to 5 U.S.C. § 503(c)(2). However, there is no section 503(c)(2) in title 5, and it is clear from the remainder of the relevant rules that the correct section is 504(c)(2). *See, e.g.*, 16 C.F.R. §§ 3.81(a), 3.81(b)(1).

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2011, I electronically filed Respondent Federal Trade Commission's Reply in Further Support of its Motion to Dismiss with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. I further certify that, on the same day, I sent a copy of this reply by mail to petitioners at the following address: William H. Isely, 300 Finsbury St., #103, Durham, NC 27703. I also e-mailed the reply to petitioners at the following e-mail address: b.isely@ftpmailbox.com. I sent a copy of the reply to Mr. Oliva at the following address: S.M. Oliva, 128 Old Fifth Circle, Charlottesville, VA 22903. I e-mailed him a copy of the reply at the following e-mail address: director@antitrusthall.com.

s/ Lawrence DeMille-Wagman