

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 August 2008

CASE NO.: 2008-LCA-00027

In the matter of:

**ADMINISTRATOR, WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR**
Prosecuting Party

v.

THE PIANO MAN, INC.
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND CONSENT FINDINGS**

This case arises from a request for hearing filed by the Respondent in the above matter, which involves the Prosecuting Party's enforcement of an H-1B Labor Condition Application under Section 212(n) of the Immigration and Nationality Act, 8 U.S.C. § 1182(n), as amended (the "Act"), and the implementing regulations set forth at 20 C.F.R. Part 655, Subparts H and I. On May 27, 2008, the Administrator, Wage and Hour Division ("Administrator") issued a determination that the Respondent violated 20 C.F.R. § 655.731 by failing to pay the required wage rate for productive work. The Administrator determined that the Respondent owed back wages totaling \$8,114.85 and found that no further monetary penalty was appropriate. On June 11, 2008, the Respondent, pursuant to 20 C.F.R. § 655.820, requested review of the Administrator's determination, alleging that the Administrator failed to account for weeks when the employee did not work. A hearing was held on August 25, 2008, and at the start of the hearing, the parties presented the Court with a Settlement Agreement and Consent Findings ("Agreement"). Upon review of the Agreement, I find that the terms are fair and reasonable and in substantial compliance with 29 C.F.R. § 18.9(b) and it is approved.

Given the travel of this case and the pro se filings of Mr. Robert Lupo, President of the Respondent, I questioned whether the parties actually reached a settlement. After the parties signed the Agreement before me on August 25, 2008, I asked Mr. Lupo if he signed the agreement voluntarily and if he understood that it compromised all of the issues regarding his

appeal of the Administrator's determination. He answered my questions in the affirmative, and after hearing from Mr. Lupo, I am satisfied there is a complete, voluntary resolution of this matter which is embodied in the parties' Agreement. Pursuant to the Agreement and the statements made on the record during the hearing, the parties agree that:

- (1) Respondent owes Lim Charles Nehemia \$6,147.05 in back wages under the Act;
- (2) Respondent is obligated to pay these back wages and agrees to pay the back wages in the amount of \$6,147.05, less deductions for the employee's share of social security and withholding tax;
- (3) Respondent shall pay the back wages in the amount of \$6,147.05 to "Lim Charles Nehemia or Wage & Hour—Labor" in two payments:
 - a. The first payment of \$3,000, less deductions for the employee's share of social security and withholding tax was tendered prior to the parties leaving Court on August 25, 2008;
 - b. The final payment of \$3,147.05, less deductions for the employee's share of social security and withholding tax, shall be paid within 30 days of this order to the United States Department of Labor, Wage & Hour Division, John F. Kennedy Federal Building, Room 525, Boston, MA 02203;
- (4) Respondent shall comply in all respects with the Act and applicable regulations in connection with any future H-1B applications;
- (5) Respondent's failure to carry out any portion of the Agreement shall subject Respondent to statutory penalties for failure to pay wages under 8 U.S.C. §1182(n) and 20 C.F.R. Part 655;
- (6) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Agreement is retained by the U.S. Department of Labor, Office of Administrative Law Judges ("OALJ");
- (7) Enforcement Proceedings for violation of the Agreement may be initiated any time by filing a motion requesting an order of enforcement and sanctions with the OALJ;
- (8) The entire record upon which this Order is based upon shall consist of the Administrator's determination, Respondent's request for hearing, the Agreement, and the statements made on the record at the August 25, 2008 hearing;
- (9) The parties waive any further procedural steps before the Administrative Law Judge and any right to challenge or contest the validity of the Agreement and any Order issued in accordance with the Agreement;

(10) The Agreement shall fully and finally resolves all outstanding issues between the parties that were raised, or reasonably could have been raised in the Administrator's determination of May 27, 2008. Except for the payment of wages under the Act, nothing in the Agreement or this Order shall affect any rights, claims, or causes of action that the Respondent may now or later have against Lim Charles Nehemia;

(11) The Agreement shall not constitute an admission by the Respondent in any other proceeding or for any other purpose, other than those specified in the Agreement;

(12) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;

(13) Each party shall bear its own costs, attorney's fees and expenses; and

(14) Nothing contained in the Agreement or this Order shall be deemed to bind any other governmental agency except the United States Department of Labor.

Accordingly, because the Agreement is fair and reasonable it is APPROVED and it is ORDERED that:

(1) The Agreement submitted by the parties which is attached hereto is adopted and made a part of the Decision and Order of the Court;

(2) The parties shall comply with each and every term contained in the Agreement; and

(3) The Agreement and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding.

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts