

U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
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Issue Date: 05 March 2010

CASE NO.: 2009-LCA-00015

In the matter of

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR**

Prosecuting Party

v.

MERTZ BITELMAN & ASSOCIATES LAW OFFICE, P.C.

Respondent

Appearances:

Andrew Karonis, Attorney (Patricia M. Rodenhauen, Regional Solicitor and William Lesser, Acting Associate Solicitor for Fair Labor Standards),
for the Prosecuting Party

Michael Wiseberg, Saddle Brook, New Jersey,
for the Respondent

Before: Daniel F. Sutton, Administrative Law Judge

CONSENT FINDINGS AND ORDER

During the formal hearing which was convened on August 12, 2009, the parties entered into mediated settlement discussions which produced a proposed Consent Findings and Order that has now been filed with the administrative law judge ("ALJ") for review. Upon review, the ALJ finds that the parties stipulations and their Consent Findings and Order are fair and reasonable and in substantial compliance with the requirements of 29 C.F.R. § 18.9(b). Accordingly, the ALJ adopts the Consent Findings and Order and finds and orders that:

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 USC § 1101 et seq. ("the INA"), as amended by the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978, the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 101-232, 105 Stat. 1733 and the American Competitiveness and Workforce Improvement Act of 1998, P. L. 105-277, 112 Stat.

2861-641. Jurisdiction over the hearing in this matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by INA § 212(n)(2), 20 CFR §§ 655.820-840.

2. On February 13, 2009, the U.S. Department of Labor, Wage and Hour Division ("DOL") issued a Determination Letter alleging the following violations of the H-1B provisions of the INA to respondent MERTZ BITELMAN & ASSOCIATES LAW OFFICE, P.C. ("Respondent"):

- a) Respondent willfully failed to pay wages to one H-1B worker, SOOHYUN JUN ("Ms. Jun") as required in violation of 20 C.F.R. §655.731 and 8 U.S.C. §1182(n)(2)(C)(vii);
- b) Respondent discriminated against Ms. Jun in violation of 20 C.F.R. §655.801; and
- c) Respondent failed to comply with the provisions of subpart H or I in violation of 20 C.F.R. §655.731(c)(2)(ii) in that it failed to report wages to the Internal Revenue Service (I.R.S.) as Ms. Jun's earnings, with appropriate withholding for the employee's tax paid to the I.R.S.

3. On February 23, 2009, Respondent filed a timely request for a hearing with respect to the allegations of violations and remedies set forth in the determination letter.

4. As a result of respondent's failure to comply with subpart H or I of the INA in violation of 20 C.F.R. §655.731(c)(2)(ii), (iii) and (iv), Respondent has failed to report \$28,750 in payments as Ms. Jun's wages to the I.R.S., and failed to make the appropriate withholdings from said payment for the employee's taxes paid to the I.R.S.

5. The parties stipulate that the agreed amount of \$56,250.40 is due to Ms. Jun as wages pursuant to 20 C.F.R. §655.731 and 8 U.S.C. § 1182(n)(2)(C)(vii), which sum includes the payment set forth in paragraph 4, above.

6. Respondent agrees to file amended tax returns on or before April 15, 2010, reporting the payment of \$28,750.00 as Ms. Jun's wages to the I.R.S. and to forward the appropriate taxes due from the Respondent respectively to the I.R.S. and any other applicable state and/or local governmental agency, pursuant to 20 C.F.R. §655.731(c)(2)(ii), (iii) and (iv). Respondent shall provide proof of said filing no later than April 22, 2010 to the following:

Philip Jacobson
U.S. Department of Labor
Wage and Hour Division
26 Federal Plaza, Room 3700
New York, NY 10278

7. Respondent further agrees to pay \$27,500.00 in back wages to Ms. Jun, said amount representing the sum of \$56,250.40 in back wages, less the sum of \$28,750.00 upon reporting the same as wages to I.R.S and any state or local governmental agency, and forwarding any required taxes due thereon from the Respondent. Respondent shall pay the back wages by mailing sixteen checks totaling the amount of \$27,500.00, less any required deductions pursuant to 20 C.F.R. §655.731(c)(2)(ii), (iii) and (iv), pursuant to the payment schedule attached as Schedule A, to Ms. Jun directly at the following address:

Soohyun Jun
1203, TheOville,
720-25 Yeoksam-dong Gangnam-gu,
Seoul, 135-541, South Korea

A copy of each such check referencing "Case No. 1489136" shall in addition be sent to the following, simultaneously with the payments to Ms. Jun:

Philip Jacobson
U.S. Department of Labor
Wage and Hour Division
26 Federal Plaza, Room 3700
New York, NY 10278

Respondent further agrees that all necessary withholdings pursuant to 20 C.F.R. §655.731 (c)(2)(ii), (iii) and (iv) shall be forward to the appropriate federal, state and/or local agency.

8. The Administrator agrees to withdraw all civil money penalties assessed in connection with the violations set forth in paragraph 2(a) and 2(b) above.

9. In the event Respondent fails comply with the provisions set forth in paragraph 6, above, Respondent agrees that it shall pay an additional \$28,750.00 as back wages to Ms. Jun, over and above the payments set forth in paragraph 7 above, by delivering a check in that amount to Ms. Jun directly, no later than April 29, 2010, at the following address:

Soohyun Jun
1203, TheOville,
720-25 Yeoksam-dong Gangnain-gu,
Seoul, 135-541, South Korea

A copy of this check, referencing "Case No. 1489136," shall in addition be sent to the following, simultaneously with the payment sent to Ms. Jun:

Philip Jacobson
U.S. Department of Labor
Wage and Hour Division
26 Federal Plaza, Room 3700

New York, NY 10278

10. A twenty (20) day grace period shall be allowed for receipt of each monthly installment set forth in Schedule A. In the event that Respondent defaults on this Consent Findings and Order by failing to make timely payment of any monthly installment, the entire outstanding balance of the back wages as originally calculated in the determination letter, in the amount of \$72,230.40, shall become immediately due and payable, with appropriate credit made for any payments previously made pursuant to the Schedule A, and for Respondent's compliance, if any, with the provisions of paragraph 6, above.

11. Respondent stipulates that the violations set forth in Paragraph 2 shall be deemed admitted for the purposes of disqualification from approval of H-1B petitions of the Respondent pursuant to 20 C.F.R. §655.810(d)(2).

12. Respondent consents to disqualification from approval of any petitions filed by, or on behalf of, the respondent pursuant to section 204 or section 214(c) of the Immigration and Nationality Act [8 U.S.C. § 1182(n)] for a period of two years. The Wage and Hour Division of the U.S. Department of Labor shall notify the Attorney General of these Consent Findings and Order pursuant to 20 C.F.R. §655.855.

13. It is further expressly agreed that it is the intent of the parties that the provisions of Paragraphs 11 and 12 herein be construed broadly and that the respondent be absolutely, conclusively and totally disqualified from approval of any petitions filed by, or on behalf of, the Respondent pursuant to section 204 or section 214(c) of the Immigration and Nationality Act [8 U.S.C. §1182(n)] for a period of two years.

14. Respondent agrees that neither Respondent, its principals, its officers nor any related company or organization shall institute any action or proceeding to recover, in whole or in part, any of the wages set forth in paragraphs 6 or 7 above from Ms. Jun. In the event that such action or proceeding against Ms. Jun has already been instituted prior to the execution of this Consent Findings and Order, Respondent agrees that any such action or proceeding shall be discontinued with prejudice.

15. The parties agree that an Order disposing of this proceeding in accordance with these Consent Findings shall have the same force and effect as an order made after a full hearing pursuant to 20 C.F.R. §655.840 in accordance with 29 C.F.R. §18.9(b)(1).

16. The entire record on which this Order may be based shall consist solely of the Determination Letter and these Consent Findings and Order (29 C.F.R. §18.9(b)(2)).

17. The parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter (29 C.F.R. §18.9(b)(3)).

18. Respondent hereby waives any right to challenge or contest the validity of these findings and order entered into in accordance with the agreement (29 C.F.R. §18.9(b)(4)).

19. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts

SCHEDULE A: Payment Schedule for Mertz Bitelman

	<u>Amount</u>¹	<u>Date Payment Due</u>
1	\$2,000.00	February 1, 2010
2	\$2,000.00	March 1, 2010
3	\$2,000.00	April 1, 2010
4	\$2,000.00	May 3, 2010
5	\$2,000.00	June 1, 2010
6	\$2,000.00	July 1, 2010
7	\$2,000.00	August 2, 2010
8	\$2,000.00	September 1, 2010
9	\$2,000.00	October 1, 2010
10	\$2,000.00	November 1, 2010
11	\$2,000.00	December 1, 2010
12	\$2,000.00	January 3, 2011
13	\$1,000.00	February 1, 2011
14	\$1,000.00	March 1, 2011
15	\$1,000.00	April 1, 2011
16	\$500.00	May 2, 2011
Total	\$27,500.00	

¹ Respondent is obligated to make the required withholdings pursuant to 20 C.F.R. §655.731(c)(2)(ii), (iii) and (iv) from each payment and to forward the same to the appropriate federal, state and/or local governmental agency.