

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 19 March 2013

CASE NO.: 2012-LCA-00014

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*In the Matter of:*

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

v.

**GEMOORES, INC.,**  
*Respondent.*

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Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Eileen R. Hurley, Esquire, (U.S. Department of Labor, Office of the Solicitor)  
Chicago, Illinois for the Prosecuting Party

Satyam R. Talati, Esquire, (Talati Patel) Troy, Michigan for the Respondent

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

This case arises from a request for hearing filed by the Respondent in the above captioned matter, which involves the enforcement of an H-1B Labor Condition Application by the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator” or “Prosecuting Party”) under section 212(n) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. §1101(a)(15)(H)(i)(b) and § 1182(n), and the regulations promulgated there under at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. §655.700 *et seq.* On December 19, 2011, the Administrator, issued a determination that the Respondent violated the Act by failing to pay

wages as required by the Act. *See* 20 C.F.R. § 655.731; 20 C.F.R. § 655.805(a)(2). The Administrator determined that the Respondent owed back wages totaling \$45,955.04 to one H-1B non-immigrant worker, and ordered payment of the back wage. On January 6, 2012, the Respondent, pursuant to 20 C.F.R. § 655.820, timely filed a request for review of the Administrator's determination. A formal hearing was originally scheduled for July 11, 2012, in Detroit, Michigan and was continued generally at the parties request so they could focus their attentions on resolving this dispute. On March 18, 2013, the parties filed a document entitled: "Settlement Agreement and Consent Findings" (hereinafter "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.

Pursuant to the Agreement the following order shall enter:

- (1) The Agreement, including the "ATTACHMENT" thereto which contains the back wage amount due the H-1B non-immigrant worker and the payment schedule is APPROVED and its terms are adopted and incorporated herein by reference;
- (2) The parties shall comply with each and every term contained in the Agreement;
- (3) Respondent agrees that it is liable for a total payment of \$25,000.00 in back wages owed to one H-1B employee, plus interest of \$20.84 and said wages have been paid by Respondent to the Administrator in accordance with the Agreement;
- (4) Any sum not distributed to an employee or to his/her personal representative after three years because of inability to locate the employee or because of his/her refusal to accept such sum, shall be deposited with the Treasurer of the United States as miscellaneous receipts;
- (5) The Respondent shall remain liable for the employer's share of FICA, Medicare, federal unemployment taxes, appropriate state tax obligations, and any other applicable statutory or regulatory payment obligations not otherwise named;

- (6) Respondent shall not, under any circumstances, accept and keep any amount returned to it by anyone owed compensation under the Agreement. Any such amount shall be immediately paid to the Administrator as set forth in the Agreement, and Respondent shall have no further obligations with respect to such returned monies;
- (7) Respondent shall not discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate against any employee because such employee has received or retained money due him or her from Respondent under the Agreement or the INA;
- (8) 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”);
- (9) 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;
- (10) The entire record upon which this Order was issued consists of the Administrator’s determination and the Agreement;
- (11) The parties waive any further procedural steps before an administrative law judge and any right to challenge or contest the validity of the Agreement, this Order, and any other order issued in accordance with the Agreement;
- (12) This Order and the parties’ Agreement shall fully and finally resolve all outstanding issues between the parties that were raised or reasonably could have been raised in connection with the Administrator’s determination letter of December 19, 2011;
- (13) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (14) Each party shall bear its own costs, attorney’s fees and expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorney’s fees which may be available under the Equal Access to Justice Act, as amended;
- (15) Nothing in the Agreement or this Order is binding on any other governmental agency other than the United States Department of Labor; and

- (16) 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.**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts