



Issue Date: 19 March 2015

**Case Nos.: 2014-FLS-00008
2014-MSP-00009**

In the Matters of:

**HENG HENG AGENCY, INC. and
VISITH OUM**

Respondents

**ORDER GRANTING ADMINISTRATOR'S MOTION, AND
ENTERING DEFAULT JUDGMENT AGAINST THE RESPONDENTS;
AND CANCELLING SCHEDULED HEARING**

This matter involves two actions, one under Section 6 of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, and implementing regulations at 29 C.F.R. Parts 578 and 580; and the other under the safety and health and contractor registration provisions of the Migrant and Seasonal Agricultural Workers Protection Act (MSPA), 29 U.S.C. § 1801 *et seq.*, and implementing regulations at 29 C.F.R. Part 500. A hearing is scheduled for March 23 and 24, 2015, in Cherry Hill, New Jersey. The Respondents are not represented by counsel.

On February 24, 2015, counsel for the Administrator (hereinafter, "Administrator,") filed a "Motion for Default Judgment" against the Respondents. The principal basis for the Administrator's Motion was the Respondents' failure to comply with my Orders relating to discovery, specifically the Respondents' failure to provide the Administrator with initial disclosures, as I had repeatedly ordered. Memorandum of Law in Support of Motion at 3-4. On March 3, 2015, I issued an order in which I directed the Respondent to submit an Answer to the Administrator's Motion, by Tuesday, March 10, 2015. Order of Mar. 3, 2015, at 1. I informed the Respondents that if they did not submit a timely response, per my Order, I would infer that the Administrator's Motion is not opposed. *Id.*, at 2.

Procedural History

By notices dated September 3, 2013, a civil money penalty in the amount of \$137,500.00 as a result of repeated or willful violations of the FLSA, and a civil money penalty in the amount of \$8,600.00, as a result of violations of the MSPA, were assessed against the Respondents. By letter dated October 25, 2013, the Respondents requested a hearing.¹ On September 19, 2014, a representative of the Office of the Solicitor, U.S. Department of Labor, New York Regional

¹ Respondents' letter stated that due to "a mistake of current mailing address" they did not receive the notices until October 24, 2013 ("10/24/2013").

Office, on behalf of the Administrator, filed an Order of Reference for both civil money penalty assessments. By Order dated September 30, 2014, Acting Chief Administrative Law Judge Stephen R. Henley issued a “Notice of Docketing” and consolidated the two cases for a single hearing.

This matter was assigned to me and, on October 6, 2014, I issued a “Notice of Hearing and Pre-Hearing Order” (hereinafter, “Hearing Notice”). In the Hearing Notice I set a date for the hearing (January 20, 2015) and directed the parties to exchange certain information and documents. Order of Oct. 6, 2014 at 2 (¶ D). I also informed the parties that their failure to comply fully with the Order may result in sanctions, and cited 29 C.F.R. §§ 18.6(d)(2) and 18.29. Id., at 6 (¶ M).

By Order dated November 12, 2014, I rescheduled the hearing, to convene on Monday, March 23, 2015.² Order of Nov. 12, 2014, at 2. This Order also stated that the provisions of my Order of October 6, 2014 remained in effect and reminded the parties that they must adhere to those portions of my order relating to discovery, including the parties’ initial disclosures. Id., at 3. I reminded the parties that failure to comply fully with my orders may result in sanctions, and directed them to read the applicable sections of the regulation so they could be fully aware of the sanctions that may be imposed and the circumstances under which I could impose sanctions. Id., at 3. The record reflects that the Respondents received this Order on November 13, 2014.³

By Motion dated November 14, 2014, the Administrator filed a Motion to Compel the Respondents to provide their initial disclosures, as set forth in my Hearing Notice. In the Motion, the Administrator’s representative stated that the Respondents had not provided the required items and failed to respond to efforts to contact them. The Respondents did not respond to the Motion to Compel, and so on December 4, 2014, I issued an order directing the Respondents to submit a response to the Administrator’s Motion, within 14 days. Order of Dec. 4, 2014, at 1. I informed the Respondents of their obligation to comply with my orders and once again informed them that sanctions could be imposed for failure to do so. Id., at 2. Further, I specifically informed the Respondents that such sanctions included “rendering a decision against the non-complying party.” Id. The record reflects that the Respondents received this Order on December 5, 2014.⁴

² By letter dated October 17, 2014, counsel for the Administrator requested a 60-day adjournment of the hearing, to March 20, 2015, and a corresponding adjustment of pre-hearing deadlines. By Order dated October 22, 2014, I directed the Respondents to submit an Answer to the Administrator’s Motion, not later than October 31, 2014, but also stated that if the Respondents did not submit an Answer, I would infer they had no objection to rescheduling this matter as requested by the Administrator. Respondents did not submit an Answer.

³ My Order was delivered to the Respondents via United Parcel Service (UPS). See Service Sheet appended to Order of November 12, 2014. The UPS tracking number’s report indicates the item was left at the Respondents’ address (front door) at 9:33 am on November 13, 2014.

⁴ My Order was delivered to the Respondents via UPS. See Service Sheet appended to Order of December 4, 2014. The UPS tracking number’s report indicates the item was left at the Respondents’ address at 10:01 am on December 5, 2014.

The Respondents did not submit any response to the Administrator's Motion, and so on January 12, 2015, I granted the Administrator's Motion to Compel. In the Order, I directed the Respondents to comply with the requirement to provide initial disclosures to the Administrator, as set forth in my Order of October 6, 2014 forthwith. Order of Jan. 12, 2015, at 2. My Order also stated the following:

I once again inform the parties that under the applicable procedural rules, sanctions may be imposed upon a party who fails to comply with an administrative law judge's order; such sanctions include, but are not limited to, inferring that such documents or evidence would be adverse to the non-complying party; ruling that the non-complying party may not introduce or rely upon such documents or other evidence; and rendering a decision against the non-complying party. 29 C.F.R. § 18.6(d)(2). FURTHER, I INFORM THE PARTIES THAT, IN THE EVENT THE RESPONDENT FAILS TO TIMELY PROVIDE INITIAL DISCLOSURES TO THE ADMINISTRATOR, AS I HAVE DIRECTED IN THIS ORDER, I WILL CONSTRUE THE RESPONDENT'S ACTION AS A FAILURE TO COMPLY WITH MY ORDERS OF OCTOBER 6, 2014; DECEMBER 4, 2014; AND THIS ORDER.

Id. (emphasis in original). The record reflects that the Respondents received this Order on January 13, 2015.⁵

Discussion

The Respondents have not filed any Answer to the Administrator's Motion for Default Judgment, and the time for submitting a timely response has passed. 29 C.F.R. § 18.6(b). Further, the record reflects that my Order of March 3, 2015, directing the Respondents to submit a response to the Administrator's Motion was delivered to the Respondents, who received it on March 4, 2015.⁶ Therefore, I find that the Respondents received adequate notice of my Order.

Consistent with my Order of March 3, 2015, I find that the Administrator's Motion is not opposed. Accordingly, I find that the record provides a basis for me to enter a default judgment against the Respondents, and in favor of the Administrator.

On review of the entire record, as summarized above, I further find that the record provides an additional basis for me to enter a judgment against the Respondents, and in favor of the Administrator, based on the Respondents' repeated failure to adhere to my Orders.

⁵ My Order was delivered to the Respondents via UPS. See Service Sheet appended to Order of January 12, 2015. The UPS tracking number's report indicates the item was left at the Respondents' address at 9:35 am on January 13, 2015.

⁶ My Order was delivered to the Respondents via UPS. See Service Sheet appended to Order of March 3, 2015. The UPS tracking number's report indicates the item was left at the Respondents' address at 10:15 am on March 4, 2015.

In sum, the record establishes the Respondents have never provided their initial disclosures to the Administrator, as I had ordered in my Notice of Hearing and Pre-Hearing Order, dated October 6, 2014, and in subsequent orders dated November 12, 2014; December 4, 2014, and January 12, 2015. The record also reflects that the Respondents were repeatedly warned that sanctions may be imposed for such failure, and were specifically informed that rendering an adverse decision against them was a sanction that may be imposed. See Orders of Dec. 4, 2014, at 2; Jan. 12, 2015 at 2.

It is within the administrative law judge's discretion to impose sanctions against a party that fails to comply with her orders. See, e.g., In the Matter of Supervan, Inc., ARB No. 00-008, ALJ No. 94-SCA-14, slip op. at 4-5 (ARB, Sept. 30, 2002). In this matter, I find that the Respondents failed to comply with my Order to provide initial disclosures to the Administrator; were informed numerous times that they risked sanctions for non-compliance with my Orders; continued to ignore this requirement; and failed utterly to submit any responses to me, despite being ordered to do so. I also find that my Orders told the Respondents that they risked sanctions, including a possible adverse decision, for failing to comply with my Orders. Further, I find that the record establishes that the Respondents received actual notice of my Orders, which were timely delivered to their address of record.

Based on the foregoing, I find that the record establishes a sufficient basis for me to impose sanctions against the Respondent, and that the sanction of entering a default judgment against the Respondents, and in favor of the Administrator, is appropriate.

Default Judgment; and Cancellation of Hearing

In light of the foregoing, I enter a default judgment against the Respondents, and in favor of the Administrator.

Because judgment in favor of the Administrator is rendered, I find that a hearing is not necessary. Accordingly, I CANCEL the scheduled hearing.⁷

⁷ All associated pre-hearing requirements are also cancelled. See Order of November 12, 2014, at 2.

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Issuance of a Notice of Intent (“Petition”) to modify or vacate that is received by the Administrative Review Board (“Board”) within twenty (20) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. §§ 500.263 and 500.264; Secretary’s Order 1-2002, 67 Fed. Reg. 64272 (2002). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. A copy of the administrative law judge’s decision must be attached to the Petition that is filed with the Board. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. *See* 29 C.F.R. § 500.264(b).

If the Board declines to modify or vacate the administrative law judge’s decision, then the decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 500.262(g).