



Issue Date: 18 December 2012

Case No.: 2012-TNE-00017

In the Matter of:

**ADMINISTRATOR,
WAGE AND HOUR DIVISION**
Prosecuting Party

v.

JIM DUNPHY'S LANDSCAPING, LLC
Respondent

**FINAL ORDER ADOPTING PARTIES'
CONSENT FINDINGS**

This matter arises under the The Immigration and Nationality Act (INA) of 1952, codified at 8 U.S.C. § 1101 et seq., authorized a temporary foreign worker program referred to as the H-2 program, which covered both agricultural and nonagricultural workers. The 1986 Immigration Reform and Control Act (IRCA) amended the INA and divided the H-2 program into the current H-2A and H-2B programs on the basis of whether the temporary labor involved an agricultural position (H-2A) or a nonagricultural position (H-2B).

On December 10, counsel for the Administrator submitted the parties' executed *Consent Findings*. The parties' filing contains the following stipulations:

JURISDICTION AND PROCEDURAL HISTORY

1. The issues resolved by these Consent Findings and Order occurred between January 1, 2010, and December 31, 2011.
2. On August 7, 2012, the Acting Administrator issued the Determination Letter to Dunphy's, alleging violations of the H-2B provisions of the INA and 20 C.F.R. § 655.60(b).
3. Within the time period provided by 20 C.F.R. § 655.71, Respondent filed a request for hearing with respect to the allegations of violations set forth in the Determination Letter.

GENERAL PROVISIONS

4. The parties agree that the 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.
5. The entire record forming the basis on which the Order is entered shall consist of the Determination Letter and attachments thereto and these Consent Findings and Order.
6. The parties to these Consent Findings and Order hereby waive all further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter.
7. The parties to these Consent Findings and Order hereby waive any right to challenge or contest the validity of these Consent Findings and Order.
8. All violations alleged in the Determination Letter issued by the Acting Administrator shall be deemed fully resolved by these Consent Findings and Order.
9. These Consent Findings and Order shall become final immediately upon approval by the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge (“Effective Date”).
10. Respondent withdraws its exception to the Determination Letter and agrees to pay \$13,500.00 in civil money penalties, in a single payment by certified check within 14 calendar days of the Effective Date of these Consent Findings and Order. Respondent shall make its certified check payable to “Wage and Hour Division — Labor” and shall include “H-2B CMP Case ID 1632190” on the memo line on the face of the check. Respondent shall forward its payment to the following address:

**U.S. Department of Labor
Wage and Hour Division, Regional Office
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317**

11. In the event that the payment of civil money penalties is not received by the U.S. Department of Labor, Wage and Hour Division within 14 calendar days of the Effective Date of these Consent Findings and Order, Respondent shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury, as required by the Debt Collection Improvement Act of 1996, P.L. 104-134, 110 Stat. 1321, 1358, and other delinquent charges and administrative costs shall also be assessed. If Respondent defaults on its payment, the Acting

Administrator and/or the Secretary of Labor may pursue enforcement of this agreement and/or any additional collection action. A decision by the Acting Administrator or the Secretary of Labor not to seek immediate enforcement of this provision shall not be deemed a waiver of this provision.

12. None of the agreements, stipulations or actions taken by Respondent in furtherance of these Consent Findings and Order, shall be deemed an admission or denial of any of the allegations contained in the Determination Letter or these Consent Findings and Order. These Consent Findings and Order and the agreements, stipulations and actions taken herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any purpose except for proceedings arising under the INA and its implementing regulations.
13. Respondent agrees to comply in the future with all applicable provisions of the INA and its implementing regulations.

ENFORCEMENT

14. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.
15. The Acting Administrator may initiate enforcement proceedings for violations of these Consent Findings and Order at any time by filing with the Administrative Law Judge a motion for an order of enforcement and sanctions.
16. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorney's fees that may be available under the Equal Access to Justice Act, as amended.

I adopt the parties' stipulations as set forth above as my findings of fact. Accordingly, this matter is hereby **CLOSED**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey