

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

Issue Date: 04 January 2013

CASE NO.: 2012-TNE-00019

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,**
Plaintiff,

v.

**NEWPORT HOTEL SERVICES, INC.,
d/b/a NEWPORT MARRIOTT**
Respondent.

Before: Daniel F. Sutton, Senior Administrative Law Judge

Appearances:

M. Patricia Smith, Solicitor of Labor; Michael D. Felsen, Regional Solicitor; Joseph S. Ackerstein, Senior Trial Attorney; and Orly Shoham, Trial Attorney, *U.S. Department of Labor*, Boston, Massachusetts, for the Plaintiff

Darryl L. Franklin, Esq., *Marriott International Corporation*, Bethesda, Maryland; and Tammy D. McCutchen, Esq., *Littler Mendelson, P.C.*, Washington, D.C., for the Respondent

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

This matter is an enforcement action brought under the H-2B provisions of the Immigration and Nationality Act, as amended (the "INA"), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), 1184(c), and the implementing regulations issued thereunder at 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503, by the Administrator, Wage and Hour Division, U.S. Department of Labor (the "Plaintiff") against Newport Hotel Services, Inc., D/B/A Newport Marriott (the "Respondent"). The matter is currently before the senior administrative law judge (the "ALJ")

for a hearing pursuant to 29 C.F.R. § 503.48. The parties have now filed a Settlement Agreement and Consent Findings pursuant to 29 C.F.R. § 503.49 in which they agree as follows:

1. This matter arises under the H-2B provisions of the Immigration and Nationality Act ("Act"), 8 U.S.C § 1101 (a)(15)(H)(ii)(b), as amended, and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503 for a hearing involving alleged violations of 20 C.F.R. § 655.60(b).
2. On July 31, 2012, the Administrator issued a Determination Letter identifying Respondent's alleged violations of the H-2B provisions of the Act.
3. On August 13, 2012, Respondent made a timely request for a hearing challenging the Administrator's determination.
4. The parties subsequently entered into negotiations designed to resolve this matter without the need for further litigation. As a result of these negotiations, the parties have agreed to settle this litigation in exchange for certain mutual agreements. These agreements are as follows:
 - a. Without admitting liability, the Respondent agrees to pay \$20,000 in civil money penalties for its alleged H-2B violations.
 - b. Respondent has transmitted payment of the civil money penalties in the amount of \$20,000 to the Wage and Hour Division in care of the undersigned attorney in the form of a certified bank check or money order made payable to "Wage and Hour- Labor."
 - c. Respondent agrees to comply in all respects with the Act and applicable regulations in the future.
5. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Settlement Agreement, is retained by the United States Department of Labor, Office of Administrative Law Judges.
6. The entire record upon which the Order issued by the Court in conformance with this agreement is based shall consist of the Administrator's determination, Respondent's request for hearing, and this agreement.
7. The parties waive any further procedural steps before the administrative law judge and waive any right to challenge or contest the validity of this Settlement Agreement and any Order issued in accordance with this agreement.
8. This Settlement 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 July 31, 2012.

9. The Order issued in this matter shall have the same force and effect as an order made after a full hearing.
10. Each party shall bear its own costs, attorney's fees and other 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.
11. Nothing in this Settlement Agreement is binding on any governmental agency other than the United States Department of Labor.
12. The Order issued in accordance with this agreement shall constitute the Final Administrative Order in this case.

Upon review, the ALJ finds and concludes that the parties' Settlement Agreement and Consent Findings comply with the requirements of 29 C.F.R. § 503.49 and provide a fair, adequate and reasonable settlement of all issues in dispute. Accordingly, the Settlement Agreement and Consent Findings are **APPROVED** and **ADOPTED** as the ALJ's decision in the matter, and the hearing proceeding in this matter is **CANCELED**.

SO ORDERED.

DANIEL F. SUTTON
Senior Administrative Law Judge

Boston, Massachusetts