

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 20 November 2013

IN THE MATTER OF:

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

v.

Case No.: 2013-TNE-00011

ROARK LANDSCAPING CORPORATION,
Respondent

REPRESENTATIVES:

Stephanie T. Gentry
Counsel for Respondent

Zaira G. Khan
Counsel for Prosecuting Party

BEFORE:

William S. Colwell
Associate Chief Administrative Law Judge

ORDER APPROVING CONSENT FINDINGS

This matter is an enforcement action brought by the Acting Deputy Administrator of the Wage and Hour Division (Prosecuting Party) against Roark Landscaping Corporation (Respondent) under the H-2B visa provisions of the Immigration and Nationality Act, as amended (the "INA"), 8 U.S.C. § 1101(a)(15)(H)(ii)(b) and 1184(c), and the implementing regulations at 20 C.F.R. §§ 655.50 through 655.76. On November 1, 2013, this tribunal received *Consent Findings* executed by the parties. The *Consent Findings*

must be reviewed in accordance with 29 C.F.R. § 503.49, which provides the following:

(a) *General.* At any time after the commencement of a proceeding under this part, but before the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof will be at the discretion of the ALJ, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof will also provide:

(1) That the order will have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based will consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the ALJ; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their attorney or agent may:

(1) Submit the proposed agreement for consideration by the ALJ; or

(2) Inform the ALJ that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefore, the ALJ, within 30 days thereafter, will, if satisfied

with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

29 C.F.R. § 503.49.

In this matter, the requirements at 29 C.F.R. § 503.49 are met. Notably, the parties entered into negotiations prior to commencement of a formal hearing. And, this tribunal finds the *Consent Findings* have been timely submitted. On review of the *Consent Findings*, wherein Respondent agrees to pay \$1,500.00 to the Wage and Hour Division "as full and final satisfaction of all contested issues," appears reasonable and will result in a just disposition of this matter.

Moreover, the terms of the *Consent Findings* comply with the regulations; *to wit*, this order "will have the same force and effect as an order made after full hearing," the "entire record on which any order in this cause may be based shall consist solely of the complaint and the agreement," and the parties waive any further right to challenge or contest the *Consent Findings*. Finally, each party agrees to bear its own costs, fees, and other expenses in this matter. Accordingly,

IT IS ORDERED this tribunal finds the parties' *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; and

IT IS FURTHER ORDERED the *Consent Findings* are APPROVED and ADOPTED as this tribunal's decision in this matter.

William S. Colwell
Associate Chief Administrative Law Judge