

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 June 2015

CASE NO.: 2014-TNE-18

IN THE MATTER OF

ADMINISTRATOR, WAGE AND HOUR DIVISION

Prosecuting Party/Complainant

v.

CLEAN SCAPES, LP

Respondent

ORDER OF DISMISSAL

The above-captioned matter arises from the Secretary of Labor's enforcement of H-2B provisions of the Immigration and Nationality Act ("INA"), 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 (2012) and 29 C.F.R. Part 503.

The Administrator, Wage and Hour Division ("Administrator") of the Department of Labor ("DOL"), issued a determination to Clean Scapes, LP ("Respondent") via letter dated August 4, 2014, stating that Respondent was found to be in violation of certain H-2B provisions of the INA (regarding an Application for Temporary Employment Certification) by willful misrepresentation of a material fact-accuracy of temporary need; and substantial failure to meet a condition of the Application-recruitment of U.S. Workers and offered wage. A civil money penalty was assessed in the total amount of \$24,041.11.

By letter dated August 18, 2014, Respondent timely requested a hearing before the DOL Office of Administrative Law Judges ("OALJ"), disputing the determination of violations and the Civil Money Penalty.

Upon referral of this matter to the OALJ, it was assigned to me on or about August 21, 2014. I issued a Notice of Hearing and Pre-Hearing Order on September 9, 2014, and scheduled a hearing for January 14, 2015 in Austin, Texas. On January 15, and May 1, 2015, I issued Orders Rescheduling Hearing for May 14, and October 14, 2015, in Austin, Texas.

By motion filed on June 5, 2015, Counsel for the Administrator filed "Administrator's Motion for Voluntary Dismissal Without Prejudice" requesting "a voluntary dismissal of this action without prejudice so that it can issue a revised determination pursuant to 29 C.F.R. 503.41 (2015) identifying the relevant violations of the I-129 petition and providing Respondent the opportunity to request a hearing pursuant to 29 C.F.R. 503.43 (2015)." To date, Respondent has not filed a response.

Upon due consideration, I construe the Administrator's Motion as a withdrawal of the determination outlined in the Administrator's letter to Respondent. Accordingly, the Administrator's Motion is **GRANTED**, the hearing scheduled for October 14, 2015 in Austin, Texas is **CANCELLED** and this matter is **DISMISSED** without prejudice.¹

ORDERED this 11th day of June, 2015, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

¹ The Court need not decide now whether the Administrator has the authority to issue a "revised determination" under the facts of this case.