

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 January 2019

Case No: 2017-TNE-00010
2017-TNE-00011

In the Matter of:

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

v.

**HOTELMACHER, LLC,
d/b/a HOLIDAY INN EXPRESS,**

and

**STEAKMACHER, LLC,
d/b/a MONTANA MIKE'S STEAKHOUSE,**
Respondents.

**DECISION AND ORDER ADOPTING PARTIES' CONSENT FINDINGS
AND ORDER CANCELLING HEARING**

On January 23, 2019, I received from counsel for the Prosecuting Party the parties' executed Consent Findings and Order. The parties' filings contain the following stipulations:

1. This action arises from the Secretary of Labor's enforcement authority under the H-2B provisions of the Immigration and Nationality Act ("INA"), as amended by the Immigration Reform and Control Act ("IRCA") (8 U.S.C. § 1101(a)(15)(H)(ii)(b) and § 1184(c)(14)), and its implementing regulations (8 C.F.R. § 214.2(h)(6)(ix), 20 C.F.R. Part 655, Subpart A (2008), and 29 C.F.R. Part 503 (2015) (applicable procedural regulations)).

2. Subject to this authority, the U.S. Department of Labor, Wage and Hour Division ("WHD") conducted investigations of Respondents covering the period from March 1, 2012, to December 31, 2012, with respect to Respondents' petitions for and employment of H-2B workers. Specifically:

a. At various times during the investigated time period, Hotelmacher employed ten (10) H-2B workers in and around its place of employment located at 2000 Boulevard of Champions, Clinton, Oklahoma 73601.

b. At various times during the investigated time period, Steakmacher employed seventeen (17) H-2B workers in and around its place of employment located at 2020 Lexington, Clinton, Oklahoma 73601.

3. Respondents are subject to the jurisdiction of Section 214 of the INA as amended, the applicable regulations at 20 C.F.R. Part 655, Subpart A (2008), and the applicable procedural regulations at 29 C.F.R. Part 503 (2015).

4. The Office of Administrative Law Judges has jurisdiction of this matter under Section 214 of the INA as amended, the applicable regulations at 20 C.F.R. Part 655, Subpart A (2008), and the applicable procedural regulations at 29 C.F.R. Part 503 (2015).

5. On April 13, 2017, WHD District Director Michael Speer (“DD Speer”) issued Determinations pursuant to Section 214(c)(14) of the Immigration and Nationality Act and Applicable Regulations Pertaining to Violations Involving H-2B Nonimmigrant Workers (“Determination Letters”) to Respondents.

6. In issuing these Determination Letters, the Administrator alleged that Respondents violated the H-2B provisions of the INA as promulgated in the regulations, as follows:

- A substantial failure to pay H-2B workers an offered wage that equaled or exceeded the highest of the prevailing wage, Federal, State, or local minimum wage, in violation of 20 C.F.R. § 655.22(c).
 - As a result, the Administrator alleged that Hotelmacher owed \$7,152.90 in back wages to ten (10) H-2B workers and sought \$7,152.90 in civil money penalties. Hotelmacher disputes the Administrator’s allegations and calculations in this regard.
 - As a result, the Administrator alleged that Steakmacher owed \$7,019.79 in back wages to seventeen (17) H-2B workers and sought \$7,019.79 in civil money penalties. Steakmacher disputes the Administrator’s allegations and calculations in this regard.
- A substantial failure to meet a condition of the labor certification application in that Respondents and/or their agents sought or received payment(s) from the H-2B workers associated with recruitment, including agent fees and recruitment costs, in violation of 20 C.F.R. § 655.22(j).
 - As a result, the Administrator alleged that Hotelmacher owed \$9,003.99 in back wages to ten (10) H-2B workers and sought \$9,003.99 in civil money penalties. Hotelmacher disputes the Administrator’s allegations and calculations in this regard.
 - As a result, the Administrator alleged that Steakmacher owed \$17,944.99 in back wages to seventeen (17) H-2B workers and sought \$17,944.99 in civil money

penalties. Steakmacher disputes the Administrator's allegations and calculations in this regard.

- A substantial failure to pay outbound transportation costs to H-2B workers whose employment was allegedly terminated prior to the end of the temporary labor certification period, in violation of 20 C.F.R. § 655.22(m).
 - As a result, the Administrator ultimately alleged that Steakmacher owed \$5,450.00 in back wages to four (4) H-2B workers and sought \$5,450.00 in civil money penalties. Steakmacher disputes the Administrator's allegations and calculations in this regard.
- A substantial failure to notify USCIS or ETA in writing within the required time period of H-2B workers whose employment was terminated prior to the end of the contract, in violation of 20 C.F.R. § 655.22(f).
 - As a result, the Administrator sought \$5,000.00 in civil money penalties from each of the Respondents respectively. Respondents dispute the Administrator's allegations and calculations in this regard.
- A substantial failure to accurately specify on the petition or 9412 Application the number of workers needed, in violation of 20 C.F.R. § 655.22(n).
 - As a result, the Administrator sought \$5,000.00 in civil money penalties from each of the Respondents respectively. Respondents dispute the Administrator's allegations and calculations in this regard.

7. The Administrator's allegations against Respondents totaled \$46,571.67 in back wages and \$48,626.68 in civil money penalties.

8. On May 10, 2017, as provided by 20 C.F.R. § 655.71(c) (2008), Respondents timely filed administrative appeals of the Administrator's Determination Letters regarding the findings of fact and conclusions drawn by the Administrator and requested a hearing.

9. The Administrative Law Judge granted Respondents' request for a hearing and issued a Notice of Hearing and Pre-Hearing Order.

10. The parties have reached a settlement of all claims asserted by the Administrator in these proceedings and agree upon the following as provisions of this Consent Order:

GENERAL PROVISIONS

1. This Consent Order disposing of all claims at issue in this proceeding shall have the same force and effect as an Order made after a full hearing on that issue.

2. The entire record forming the basis on which the Consent Order is entered shall consist of the Notices of Determination, the Requests for Hearing, and the provisions contained herein.

3. The parties hereby waive all further procedural steps between themselves before the Administrative Law Judge regarding the claims at issue in this proceeding.

4. The parties waive any right to challenge or contest the validity of this Consent Order.

5. All violations alleged in the Notices of Determination issued by the Administrator are and shall be deemed fully resolved by these Consent Findings and Order with regard to all parties.

6. This Consent Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of this Consent Order shall be the date of approval by the Administrative Law Judge.

SPECIFIC PROVISIONS

1. The Administrator, in consideration of the facts of this case and other pertinent litigation factors, hereby agrees to accept \$16,147.01 to fulfill alleged unpaid wage obligations due the 27 H-2B workers and \$15,427.59 in resolution of the alleged civil money penalties. The total amount of \$31,574.60 from Respondents resolves all claims asserted in these proceedings.

2. Respondents, without admitting any of the aforesaid violations contained in the Notices of Determination, and as a good faith resolution of their dispute with the Administrator concerning the alleged violations set forth in the Notices of Determination, agree to pay this total amount of \$31,574.60 on or before February 15, 2019.

3. Respondents withdraw their Requests for Hearing filed in this matter as to the amount of back wages owed.

4. In resolving the claims asserted in the Determination Letters and these proceedings, Respondents continue to agree to comply with all the requirements of the H-2B provisions under the INA, the regulations promulgated thereunder, and the conditions of the I-129 Petition, and the regulations promulgated thereunder.

5. Respondents will collectively make payment in the total amount of \$31,574.60 to the Administrator in one of the following forms: (1) by certified check or money order, identifying reference numbers 1671530 and 1672601 and made payable to "Wage and Hour Division, U.S. Department of Labor," sent by U.S. mail, first-class, postage prepaid, to the U.S. Department of Labor, Wage and Hour Division, 525 S. Griffin Street, Room #800, Dallas, TX 75202-5007; or (2) by ACH transfer, credit card, debit card, or digital wallet by going online to <https://pay.gov/public/form/start/77803930>, or by going to www.pay.gov and searching "WHC CMP Payment – SW Region".

6. In the event that Respondents fail to make payment as specified above, the entire amount shall become due and payable immediately without further notice or demand by the Administrator. The outstanding unpaid balance shall be subject to the assessment of interest and penalties at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996, P.L. 104-134 Stat. 1321, 1348. Additionally, other delinquent charges and administrative costs will be assessed as necessary and authorized by law. The

Administrator and/or Secretary of Labor will also pursue additional collection action as may be authorized by law that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice. A decision by the Administrator not to seek immediate enforcement of this Section will not be a waiver of this Section's provisions.

REPORTING AND ENFORCEMENT

1. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Order, is retained by the Office of Administrative Law Judges.
2. Enforcement proceedings for violation of this Consent Order may be initiated at any time upon the filing with the Administrative Law Judge of a motion for an Order of enforcement and sanctions.
3. Each party will 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, which may be available under the Equal Access to Justice Act, as amended.
4. This Consent Order shall constitute the final Administrative Order in this case.

I adopt and enter the parties' Consent Findings and Order.

Additionally, pursuant to the parties' request, the hearing of this matter currently set for 9:00 a.m. on February 5, 2019, continuing if necessary through February 8, 2019, in or near Oklahoma City, Oklahoma, is CANCELLED.

This matter is hereby CLOSED.

SO ORDERED.

PAUL R. ALMANZA
Associate Chief Administrative Law Judge