

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

Issue Date: 22 October 2020

CASE NO.: 2019-TNE-00033

In the Matter of:

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

v.

CANTELE TENT RENTALS, LLC,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding arises from the Secretary of Labor's Enforcement of Temporary Non-agricultural Visa ("H-2B") provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* ("INA" or "the Act"), as amended, and the implementing regulations set forth at 20 C.F.R. Part 655, and 29 C.F.R. Part 503. On May 8, 2019, the U.S. Department of Labor, Administrator, Wage and Hour Division, acting as agent for the Secretary of Labor ("Secretary"), issued a determination assessing civil money penalties, back wages and a two year debarment against Respondent. In letter dated May 31, 2019, Respondent objected to the Secretary's Determination and requested an administrative hearing before an administrative law judge pursuant to 29 C.F.R. § 503.43 (2015). The case was docketed and set for a hearing.

On October 19, 2020, the Parties filed an Agreement, consisting of proposed Consent Findings and Order ("Agreement"), signed by both parties. Upon review of the Agreement, and considering the nature of the case, the Court finds the terms to be fair, reasonable, and in substantial compliance with 20 C.F.R. § 18.71 and 29 C.F.R. § 503.43(b). The amount of the assessed penalty in the Agreement is adequate, and the Agreement was not procured under duress or coercion. The proposed consent findings are hereby adopted by the Court as findings of fact, and the Agreement is hereby incorporated into this decision.

In accordance with the terms of the Agreement, it is hereby **ORDERED**:

1. The Administrator shall amend its May 8, 2019, Determination Letter to allege that Respondent owes back wages in the total amount of \$40,641.71 (due to the employees listed in Exhibit A, attached to the Agreement) and civil money penalties in the total amount of \$9,358.28. The Administrator shall also amend its May 8, 2019, Determination to withdraw Notice of Debarment, pursuant to 29 C.F.R. § 503.24.

2. Respondent shall withdraw its exceptions to the May 8, 2019, Determination Letter as amended and shall pay \$40,641.71 in back wages and \$9,358.28 in civil money penalties.
3. Respondent shall make electronic payment 21 days from the date of this Decision and Order Approving Settlement as follows:
 - a. For the back wage payment, Respondent shall go to <https://pay.gov/public/form/start/77689032>, select “Continue to Form” and complete the required fields. The “BW Case Number” is 1864202. The “Date of Assessment” is the date of this Order.
 - b. For the civil money penalty payment, Respondent shall go to <https://pay.gov/public/form/start/7734139>, select “Continue to Form” and complete the required fields. The “CMP Case Number” is 1864202. The “Date of Assessment” is the date of this Order.
4. The Administrator shall distribute the back wages described in paragraph 2 above, less any legally required deductions, to the persons named in Exhibit A of the Agreement, or to their estates, if necessary, in the Administrator’s sole discretion. Any money not paid within a period of three years from the date of its receipt, because of an inability to locate the proper persons, or because of their refusal to accept it, shall then be deposited in the Treasury of the United States, as miscellaneous receipts. Respondent remains responsible for paying the employer’s share of any applicable taxes to appropriate local, state and federal revenue authorities. Respondent, any of its agents, or anyone acting on its behalf, will not, directly or indirectly, solicit or accept the return or refusal of any sums paid due under this Order.
5. Within 30 calendar days of this Order, Respondent shall provide the Wage and Hour Division with the social security numbers, if available, and all known addresses and phone numbers of each former or current employee listed in Exhibit A of the Agreement.
6. Respondent shall fully comply with the requirements of the H-2B program and applicable regulations, including, but not limited to the regulations requiring that:
 - a. Respondent pay all H-2B employees at the required prevailing wage rate for all hours worked, pursuant to 29 C.F.R. § 503.16(a);
 - b. Respondent comply with the requirements pay inbound and outbound transportation, subsistence costs, visa fees and the safety requirements for employer-provided transportation pursuant to 29 C.F.R. § 503.16(j);
 - c. Respondent comply with the requirement to post the notice of worker rights, including in Spanish and any other language common to a significant portion of workers if not fluent in English, pursuant to 29 C.F.R. § 503.16(m) (this notice is currently available at the “Posters” link on the website: <https://www.dol.gov/agencies/whd/immigration/h2b>);

- d. Respondent's offer to prospective U.S. workers accurately represent the terms and conditions of employment, pursuant to 29 C.F.R. § 603.16(q); and
- e. Respondent comply with all document retention requirements, under 29 C.F.R. § 503.17, 29 C.F.R. Part 503, and 20 C.F.R. Part 655, Subpart A.

Respondent shall ensure that all its owners, agents, managers and supervisors are knowledgeable of the H-2B regulations' prohibition against intimidation, retaliation, blacklisting, discharge, discrimination and other prohibited conduct by an H-2B employer (as further set forth at 29 C.F.R. § 503.16(n)).

Respondent shall not discharge or in any way discriminate against any employee because such employee has complained, provided information, or otherwise asserted rights, including cooperating with the Wage and Hour Division, the U.S. Department of Labor, or any other federal, state or local government agency, related to the requirements of the Act.

- 7. Respondent shall implement the following provisions to ensure compliance, without limitation, and shall continue to implement the following provisions for a minimum of three years (if Respondent is employing any employees pursuant to the H-2B program in a particular season). Specifically, Respondent shall hire a third-party contractor ("contractor") to assist Respondent in complying with the H-2B regulations. Together with such contractor:
 - a. Respondent shall conduct pre-season reviews of all the requirements of the H-2B regulations and of Respondent's policies and practices to ascertain that all procedures are in place for full compliance;
 - b. Respondent shall conduct mid-season reviews to evaluate compliance with all H-2B regulations;
 - c. Respondent shall conduct post-season audits to evaluate compliance with all of the H-2B regulations; and
 - d. Respondent and its contractor shall conduct trainings for Respondent's owners, agent, managers and supervisors to ensure compliance with paragraphs 6 and 7 of this Order.
- 8. Respondent neither admits nor denies the allegations set forth in the May 8, 2019, Determination Letter, as amended.
- 9. Nothing in this Order preempts the Wage and Hour Division's authority, in accordance with the law, to conduct unannounced inspections of Respondent's facilities at any time, at the Agency's discretion.

10. Nothing in this Order shall in any way limit the authority or rights of the Wage and Hour Division to conduct further investigations of Respondent within the Division's enforcement authority, or to take appropriate enforcement actions or remedies with respect to any violations disclosed by such investigations.
11. The parties have waived any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter, pursuant to 29 C.F.R. §§ 18.71(b)(3) and 503.49(b)(3).
12. Respondent has waived any right to challenge or contest the validity of this Order, entered into accordance with the Agreement, pursuant to 29 C.F.R. §§ 18.71(b)(4) and 503.49(b)(4).
13. Respondent shall comply with any further Wage and Hour investigations.
14. Respondent shall acknowledge that it has been represented by counsel and fully understands its obligations under the Agreement and this Order.
15. This Order shall have the same force and effect as an order made after a full hearing in accordance with 29 C.F.R. §§ 18.71(b)(1) and 503.49(b)(1).
16. The entire record on which this Order is based shall consist solely of the Determination Letter, as amended herein, and the Agreement. 29 C.F.R. §§ 18.71(b)(2) and 503.49(b)(2).
17. Each party shall bear its own fees and expenses incurred in connection with any stage of this proceeding.
18. The hearing scheduled to begin on November 3, 2020, is cancelled.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts