



Issue Date: 11 February 2019

OALJ Case No.: 2019-TNE-00007

In the Matter of

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

Prosecuting Party

v.

PUDGY PELICAN d/b/a ZOE'S BEACHFRONT EATERY

Employer

DECISION AND ORDER APPROVING CONSENT FINDINGS

This above-captioned matter arises from the request for hearing filed by Pudgy Pelican d/b/a Zoe's Beachfront Eatery ("Respondent") on the determination of the Administrator of the Wage and Hour Division ("Administrator") issued by letter dated October 22, 2018. That determination 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 its implementing regulations set forth at 20 C.F.R. Part 655, Subpart A, and 29 C.F.R. Part 503.

This matter is currently scheduled for a hearing on April 9, 2019. On February 4, 2019, counsel for the Administrator submitted the parties' executed Consent Findings, which provide as follows:

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 *et seq.* ("the INA"), as amended by the Immigration Reform and Control Act of 1986, P.L. 99-603, 100 Stat. 3359. Jurisdiction over the hearing matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by the INA at §§ 103(a)(6), 214(c) and 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503.
2. On October 22, 2018, the U.S. Department of Labor, Wage and Hour Division issued a Determination Letter alleging violations of the H-2B provisions of the INA, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) and 1184(c)(14) to Respondent, covering the period of January 1, 2016 through November 30, 2016 and assessing back wages and civil money penalties. Specifically, the Determination Letter alleged that Respondent committed violations regarding an Application for Temporary Certification, ETA Form 9142B with Appendix B, in violation of 29 C.F.R. §§ 503.16(a), (b), (d), (e), (j), (l), (m), (s), (w), and (y). The

Determination Letter also provided notice that Respondent would be debarred from obtaining labor certifications for a period of two years, pursuant to 29 C.F.R. § 503.24.

3. In November and December 2018, Respondent produced to the Administrator documentation regarding the financial condition of Respondent and its owners.
4. The Administrator hereby amends its October 22, 2018 Determination Letter to allege that Respondent owes a civil money penalty in the total amount of \$6,500.00. No amendment is made to the Determination Letter other than to the amount of the civil money penalty.
5. Respondent withdraws its exception to the October 22, 2018 Determination Letter and agrees to pay \$6,500.00 in civil money penalties, plus \$33.39 in interest, for a total of \$6,533.39, according to the procedures set forth in Paragraph 10 and Exhibit A of these Consent Findings and Order.
6. Respondent has paid the \$2,281.76 in assessed back wages.
7. Respondent agrees that the Administrator, Office of Foreign Labor Certification shall not issue future labor certifications to Respondent for a period of two years from the date an Order is entered approving these Consent Findings. 29 C.F.R. § 503.24. Pursuant to 29 C.F.R. § 503.24(f), Respondent will also be disqualified from filing any other labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, Respondent for the same two year period.
8. Respondent agrees that owners Jane Wood and Donald Wood will provide truthful testimony in any legal proceedings involving any of the following companies or persons or their agents: Alton Waite, Donna Mclean, Denig Minto, Helden Thomas, H2 Staffing, or Market Place. Respondent's agreement to provide such testimony shall include: meeting with representatives of the Administrator for an interview at a mutually agreeable time and place; agreeing to serve as a deponent at a mutually agreeable time without subpoena; and agreeing to serve as a witness without subpoena in such legal proceedings. The Administrator agrees to provide witness fees and mileage reimbursement as permitted by 28 U.S.C. § 1821.
9. Respondent shall pay the civil money penalties and interest according to the payment schedule in the amounts and by the dates set forth in Exhibit A to these Consent Findings. Respondent shall make each payment by completing fully either the procedures in subparagraph 10(a) (for electronic payments via www.pay.gov) or subparagraph 10(b) (for payments by cashier/certified check).
 - (a) For electronic payments, go to <https://pay.gov/public/form/start/77734139>, select "Continue to Form," and complete the required fields.
 1. The "CMP Case Number" is Case No. 1827506.

2. The “Date of Assessment” is the date of the Order.

(b) For payments by cashier or certified check, perform the following steps:

(c)

1. All payments shall be in separate cashier or certified checks made payable to “Wage and Hour Division – Labor” with “Case No. 1827506” and “Civil Money Penalties” written on the face of each check.

2. Respondent shall send all checks to:

U.S. Department of Labor
Wage and Hour Division, Regional Office
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia PA 19106-3317.

3. Respondent shall also send a copy of each check to:

U.S. Department of Labor
Wage and Hour Division
Southern New Jersey District Office
3131 Princeton Pike Bldg 5 Rm 216
Lawrenceville, NJ 08648

10. A five (5) calendar-day grace period shall be allowed for receipt of each installment payment. In the event that the Administrator does not receive any payment by the sixth (6th) day after which it is due, the Administrator’s representatives will notify Respondent. If the Administrator does not receive any payment within ten (10) days of such notification, the entire unpaid balance, plus interest, shall become due immediately. In that event, the Administrator may, in its sole discretion, pursue any and all collection measures permitted under law. No action or non-action by the Administrator shall constitute a waiver of this paragraph.

11. Respondent hereby agrees to fully comply with the requirements of the H-2B program and applicable regulations.

12. The parties agree that an Order disposing of this proceeding in accordance with these Consent Findings 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).

13. The entire record on which this Order may be based shall consist solely of the Determination Letter, as amended herein, and these Consent Findings and Order, 29 C.F.R. §§ 18.71(b)(2) and 503.49(b)(2).

14. The parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter, 29 C.F.R. §§ 18.71(b)(3) and 503.49(b)(3).
15. Respondent hereby waives any right to challenge or contest the validity of these Consent Findings and Order entered into in accordance with the agreement, 29 C.F.R. §§ 18.71(b)(4) and 503.49(b)(4).
16. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

I have reviewed the foregoing Consent Findings, and I find they are fair and adequate. Accordingly, upon request of the parties, I hereby **APPROVE** and **ADOPT** the Consent Findings, and I hereby **CANCEL** the April 9, 2019, hearing.

I **ORDER** the parties to comply with the Consent Findings, as set forth above.

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: Any party seeking review of this decision and order, including judicial review, shall file a Petition for Review (“Petition”) with the Administrative Review Board (“ARB”). The ARB must receive the Petition within 30 calendar days of the date of this decision and order. 20 C.F.R. § 76(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. No particular form is prescribed for the Petition; however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge’s decision and order, and any other record documents which would assist the ARB in determining whether review is warranted.

If filing paper copies, you must file an original and four copies of the petition for review with the Board. If you e-File your petition, only one copy need be uploaded.

20 C.F.R. § 655.76(b). If the ARB determines that it will review this decision and order, it will issue a notice specifying the issue or issues to be reviewed; the form in which submissions shall be made by the parties (*e.g.*, briefs); and the time within which such submissions shall be made. 20 C.F.R. § 655.76(e). When filing any document with the ARB, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(f).