

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 31 August 2007**

Case No.: **2007-TAE-00001**

In the matter of

**MILLION EXPRESS MANPOWER, INC.**

Upon a request for a hearing regarding the assessment  
of Civil money penalty under 29 C.F.R. Part 501,

Respondent.

**ORDER GRANTING PLAINTIFF'S REQUEST FOR DISMISSAL**

This action was filed pursuant to the Immigration and Nationality Act (Act), as amended by the Immigration Reform and Control Act of 1986, U.S. Code, Title 8, §§ 1101(a) and 1188(c), and is governed by the implementing Regulations found at Code of Federal Regulations, Title 29, Part 501.

On May 25, 2007, the Administrator for the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (Administrator), through counsel filed an Order of Reference with the Office of Administrative Law Judges pursuant to 29 CFR § 501.37. Included with the Order of Reference was a copy of the December 2, 2005, notice of assessment in file number 1407644 for civil money penalties against Respondent corporation in the amount of \$147,100.00 for violations of the H-2A provisions of Section 301 of the Immigration Reform and Control Act of 1986 during the period January 1, 2005 through September 20, 2005. Also included were copies of a cover memorandum from the case investigator, D. Craig, dated January 6, 2005 stating that "The attached correspondence was received via fax in the Raleigh DO on 1-6-2005 at approximately 2:05pm." The attached document was a copy of a facsimile transmission signed by Seo Homsombath and carrying a transmission time/date of "Sep. 04 2004 05:30AM". This transmission referenced "file number: 1407644" and indicated that Mr. Homsombath had conversed "with Mr. D. Craig ... on numerous occasions and ... provided him with documents that he requested." Mr. Homsombath referenced prior correspondence and stated that he "was not aware of any problems prior to your letter" and believed everything was in order. He reported "that Million Express Manpower, Inc. no longer exists." Mr. Homsombath indicated that "the purpose of this fax is to confirm my request for a formal hearing."

On July 31, 2007, the Administrator for the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, through counsel, filed “Complainant’s Motion to Name Seo Homosombath (sic) as a Respondent” *In the Matter of Million Express Manpower, Inc.*, now pending before this Administrative Law Judge as case number 2007-TAE-00001.

Review of the administrative file indicates that “Million Express Manpower, Inc.” was incorporated within the State of North Carolina by the filing of Articles of Incorporation on April 16, 2003, by Benjamin M. Li as the incorporator. The Secretary of State for North Carolina reports that the corporation was formed on April 11, 2003 as a domestic corporation of perpetual duration. The registered agent is Seo Homosombath of Cary, North Carolina. The Secretary of State indicates that “the business entity has not filed articles of dissolution and has not been administratively dissolved or had its authority revoked.”

Regulations at 29 CFR § 501.31 requires that “Whenever the Administrator determines to assess a civil money penalty ... the person against whom such action is taken shall be notified in writing of such determination.” The notice required by this section must “(a) set forth the determination of the Administrator including ... the amount of any civil money assessment and the reason or reasons therefore; (b) set forth the right to request a hearing on such determination; (c) inform any affected person or persons that in the absence of a timely request for hearing, the determination of the Administrator shall be come final and unappealable; [and] (d) set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33” 29 CFR § 501.32. Regulations set forth in 29 CFR § 501.33 provide that “(a) Any person desiring to request an administrative hearing on a determination referred to in § 501.32 shall make such request in writing to the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, no later than thirty (30) days after the issuance of the notice referred to in § 501.32. ... (c) The request for such hearing must be received by the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, within the time set forth in paragraph (a) of this section.”

Regulations at 29 CFR § 501.35 provides that “Each administrative proceeding permitted under the Act and these regulation shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.” Regulations at 29 CFR § 501.22 provides that where civil money penalties are assessed and the assessment is directed in a final order by the Administrator, the person against whom the civil money penalty is assessed must promptly remit the amount assessed to the Administrator.

The Order of Reference and supporting documents indicate that the Administrator issued a determination of civil money penalties against Respondent on December 2, 2005. The notice of determination contains the information required by the above cited regulations. The administrative file failed to indicate that the Respondent filed a request for hearing related to the December 2, 2005 notice of determination. Without a written request for formal hearing timely filed after the notice of determination, the determination of the Administrator becomes the final order of the Agency and no jurisdiction exists for this Administrative Law Judge to proceed with a hearing on the administration’s December 2, 2005 determination. By Order of August 10, 2007, the Parties were ordered to “show cause why the referenced action should not be dismissed due to the Administrator’s determination being a final order prior to the order of reference being

issued.” The Parties were required to file their respective response by 4:00 PM, August 30, 2007.

On August 30, 2007, the Regional Solicitor filed a response to the show cause order. The Solicitor submits that a written request for formal hearing was submitted on January 6, 2006, notwithstanding the “Sep. 04 2004 05:30AM” date set forth on the facsimile transmission from Mr. Homsombath requesting a formal hearing, and the “January 6, 2005” date which the case investigator reports as the date the request for hearing was received in the Raleigh, North Carolina office. The Solicitor supplied documentation that the December 2, 2005 notice of determination was served by certified mail, article #7003 0500 0003 9168 3593, with receipt acknowledged by Mr. Homsombath on December 7, 2005. The Solicitor submits that the written request was required to be filed by January 1, 2006, and thus constitutes an untimely filing such that the December 2, 2005 Determination Letter “has become the final and unappealable Order of the Secretary ... and the action should be dismissed.”

No response to the show cause Order has been filed by the Respondent, Million Express Manpower, Inc. or its representatives.

Regulations at 29 CFR § 18.3(d) provides that “Service of complaints or charges in enforcement proceedings shall be made either: (1) By delivering a copy to the individual, partner, officer of a corporation, or attorney of record; (2) by leaving a copy at the principal office, place of business, or residence; (3) by mailing to the last known address of such individual, partner, officer or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee.” Regulations at 29 CFR § 18.4(c)(3) provides that “Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice or document is served upon said party by mail, five (5) days shall be added to the prescribed period.”

## **FINDINGS**

After deliberation on the administrative file and response to the Order to Show Cause, this Administrative Law Judge finds:

1. that the December 2, 2005 Determination Notice was served on the Respondent by certified mail;
2. that the Respondent was required to file a request for formal hearing no later than Tuesday, January 3, 2006, since January 1, 2006 was a Sunday and January 2, 2006 was a Federal holiday;
3. that the Respondent filed its request for hearing on January 6, 2006;
4. that Respondent’s request for a formal hearing was untimely made; and
5. that the Respondent has failed to establish good cause for the untimely filing of the request for formal hearing.

## ORDER

In view of the foregoing, **IT IS ORDERED** that the Solicitor's **request for the cause of actions to be dismissed is GRANTED** and **THE CAUSE OF ACTION IS DISMISSED WITH PREJUDICE**.

In view of the foregoing action, the Solicitor's "Motion to Name Seo Homosombath (sic) as a Respondent" is moot.

A

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) days of the date of issuance of the administrative law judge's decision. *See* 29 C.F.R. § 501.42(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. *See* Secretary's Order 1-2002, ¶4.c.(17), 67 Fed. Reg. 64272 (2002). The Respondent, Administrator, or any interested party desiring review of the administrative law judge's decision may file a Petition. *See* 29 C.F.R. § 501.42(a). Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties to the case as well as the administrative law judge. *See* 29 C.F.R. § 501.42(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final agency action. *See* 29 C.F.R. § 501.42(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 501.42(a).