



Issue Date: 13 August 2019

CASE NO.: 2018-TAE-00008

In the Matter of:

EMILIA ALVAREZ HARVESTING,
Respondent.

ORDER ON CONSENT FINDINGS

A hearing in this matter was scheduled for hearing to commence on January 16, 2019 in Savannah, Georgia. At the time set for hearing, the parties engaged in additional discussion and ultimately reached a resolution. On June 20, 2019, counsel for the Administrator mailed the parties' consent findings and proposed order. Upon review, I determined that the proposed consent findings and order contained a number of apparent mathematical errors and inconsistencies, and directed submission of a new proposal. The Administrator filed a revised version of the consent findings and proposed order on July 31, 2019. There are still errors and inconsistencies.¹ For example:

- Paragraph 7 and Paragraph 9 require payment to be made to two different addresses;
- Two different dates for the Administrator's Determination Letter appear in the proposed consent findings (March 10, 2017 in paragraph 3 and April 7, 2017² in paragraph 4);
- Two different addresses for the agreed payments appear in the proposed consent findings³;
- The installment payments attributed to payment of back wages (installments 1-16 set forth in Paragraph 9) total \$269,330.74, while Paragraph 7 sets the proper amount at \$260,941.71 – which itself appears to be an error, as both the installments and the sum of the

¹ This is disappointingly sloppy work, especially after the errors were pointed out in my previous order. I expect better from the experienced counsel involved in this case.

² The Determination Letter in the file is dated March 10, 2017, so I find that is the correct date, and I further find that there is no Determination Letter bearing the date April 7, 2017 that applies to this Order.

³ Maybe the parties did in fact intend for different payments to be paid to two different addresses, one for the back wages and one for the civil money payments; but they sure didn't make that clear or required. If Respondents make payment to the Atlanta address, their obligations will be satisfied. The parties may mutually agree to a different arrangement without intervention of the undersigned.

agreed back wages and civil money penalties set forth in Paragraph 7 total \$260,641.71.

- Paragraph 7 refers to \$148,041.71 in H-2A back wages and \$112,600.00 in civil money penalties, for a total of \$260,041.71, but Paragraph 9 separately requires the civil money penalties in the amount of \$112,600 to be paid in monthly installments totaling \$260,041.71.

Rather than require a third try, I will approve the consent findings with some modifications. Accordingly, IT IS HEREBY ORDERED:

1. This action arises under the Immigration and Naturalization Act, 8 U.S.C. § 1101 *et seq.*, (the “Act”) and the implementing regulations found at 29 C.F.R. Part 501. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by 29 C.F.R. § 501.37.
2. The issues resolved by these Consent Findings and Order were identified initially during investigations conducted by the Wage and Hour Division (“WHD”) covering the period of April 1, 2015 to October 1, 2015.
3. On March 10, 2017, the WHD Administrator issued a Determination Letter to Respondent notifying Respondents of WHD’s findings, computed back wages, and assessed civil money penalties (CMPs).
4. Within the time period provided by 29 C.F.R. § 501.33, Respondent filed a Request for Hearing with respect to the assessment of CMPs set forth in the Determination Letter.
5. Respondents have failed to pay any of the back wages or assessed CMPs outlined in the March 10, 2017 Determination Letter. Respondents represented that they lacked the assets to satisfy immediately the amount of back wages and civil money penalties owed and requested a payment plan.
6. The parties have conferred and have executed their consent findings and order to resolve the outstanding back wages and assessment of the CMPs as of January 16, 2019. In consideration, Respondents agree to pay the outstanding \$148,041.71 in H-2A back wages and the Administrator amends the aforesaid March 10, 2017 Determination Letter to allege that Respondents owe \$112,600.00 in CMPs as long as Respondents adhere to the payment terms and conditions set forth in paragraphs 7 through 9 below.
7. Respondents agree to pay the outstanding H-2A back wages and CMPs, pursuant to the schedule set forth in Paragraph 9 below, commencing August 1, 2019. Respondents will submit the monthly payments to the Administrator by Certified Check via U.S. mail to: U.S. Department of Labor, - Wage and Hour Division, c/o Gary Pack, 61 Forsyth Street, SW, Room 7M80, Atlanta, Georgia 31406. Respondents need not send payments to the address set forth in Paragraph 7 of the Consent Findings and Proposed Order.
8. The parties agree that the circumstances in these proceedings are of a nature warranting debarment under applicable law and regulations pursuant to 20 C.F.R. § 655.73. Respondents are hereby DEBARRED

and PROHIBITED from participating in the H-2A program for a period of three (3) years.

9. On the condition of Respondents' debarment, the Administrator agrees to amend the March 10, 2017 Determination Letter to assess \$112,600.00 in CMPs. Respondents agree to pay the \$112,600.00 in CMPs as part of the monthly installments, as outlined below, over a 27-month period beginning August 1, 2019. Respondents shall submit a certified check for each CMP payment, via U.S. mail to: U.S. Department of Labor – Wage and Hour, c/o Gary Pack, 61 Forsyth Street, SW, Room 7M80, Atlanta, Georgia 30303. The installments shall be paid pursuant to the following schedule:

Payment No.	Date	Amount
1	08/01/2019	\$34,726.91
2	09/01/2019	\$8,689.03
3	10/01/2019	\$8,689.03
4	11/01/2019	\$8,689.03
5	12/01/2019	\$8,689.03
6	01/01/2020	\$8,689.03
7	02/01/2020	\$8,689.03
8	03/01/2020	\$8,689.03
9	04/01/2020	\$8,689.03
10	05/01/2020	\$8,689.03
11	06/01/2020	\$8,689.03
12	07/01/2020	\$8,689.03
13	08/01/2020	\$8,689.03
14	09/01/2020	\$8,689.03
15	10/01/2020	\$8,689.03
16	11/01/2020	\$8,689.03
17	12/01/2020	\$8,689.03
18	01/01/2021	\$8,689.03
19	02/01/2021	\$8,689.03
20	03/01/2021	\$8,689.03
21	04/01/2021	\$8,689.03
22	05/01/2021	\$8,689.03
23	06/01/2021	\$8,689.03
24	07/01/2021	\$8,689.03
25	08/01/2021	\$8,689.03
26	09/01/2021	\$8,689.03
27*	10/01/2021	\$8,689.03

*The parties agreed to a 28th payment of \$8,689.03; however, including that payment would make the total exactly \$8,689.03 higher than the agreed total. Respondents therefore will not be required to make the 28th payment.

10. If Respondents fail to make payments as required above, then the Administrator may void the amendment of CMPs referenced in Paragraph 9, and may reinstate the initial amount of CMPs assessed in the March 10, 2017 Determination Letter which will become due immediately, but no later than 30 days after the first day of default.
11. If any of the monies paid pursuant to this Order cannot be distributed within the period of three years from the date hereof, because of inability to locate the proper persons or because of such persons' refusal to accept them, such amounts shall be deposited into the Treasury of the United States as miscellaneous receipts.
12. If Respondents default on the terms and conditions outlined in paragraphs 6-9 and the original amount of CMPs assessed is reinstated, Respondent shall submit via U.S. Mail two certified checks, one in the amount of the remaining balance of back wages owed and one for the remaining balance of the original amount of CMPs as initially assessed in the March 10, 2017 Determination Letter, to the address set forth in paragraphs 7 and 9 above.
13. The dollar amounts reflected in this Order constitute a debt owed to the federal government and therefore are subject to the assessment of interest, administrative cost charges, and penalties in accordance with the Debt Collection Act of 1982 and Departmental policies. Additional interest will be assessed at the current U.S. Department of the Treasury Tax and Loan Account rate on any payment not received by the due date, as outlined in paragraph 9, accruing daily from the first day of default.⁴ A penalty at the rate of 6% will be assessed daily on any payment not paid within 30 days of the payment's original due date, beginning on the thirty-first day of default.
14. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.
15. The entire record forming the basis on which the Order is entered shall consist of the Determination Letter and the provisions and amendments contained herein.
16. The parties waive all further procedural steps between themselves before the Administrative Law Judge. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.
17. The violations alleged in the Determination Letter issued by the Administrator, as amended herein, is and shall be deemed fully resolved by these Consent Findings and Order with regard to all parties.
18. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

⁴Given that this Order is being issued several days after the first installment payment is due, the Administrator *may not* assess such penalty on the payment that was due on August 1, 2019, if it was not made at that time, so long as payment is made within 10 days of the date of this Order.

19. Pursuant to 29 C.F.R. § 501.22, Respondents withdraw their request for hearing in this matter regarding the findings in the Determination Letter dated March 10, 2017. The Administrator's conditional amendment to the Determination Letter, resulting in an amended CMP amount of \$112,600.00, shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33.
20. However, if Respondents fail to adhere to the terms and conditions of paragraph 6 of these Consent Findings and Order, then the Administrator's conditional amendment, referenced in paragraph 8, is void and the original Determination Letter dated March 10, 2017 shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33.
21. Respondents are hereby DEBARRED from the H-2A program, pursuant to 20 C.F.R. § 655.73, for a period of three (3) years.
22. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.
23. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.
24. 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.
25. These Consent Findings and Order shall constitute the final Administrative Order in this case.

SO ORDERED.

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

PCJ, Jr./ksw
Newport News, Virginia