



Issue Date: 05 June 2019

Case No.: 2019-TAE-00013

In the Matter of:

T M HARVESTING, INC.,
Employer.

**NOTICE OF DOCKETING AND
ORDER APPROVING CONSENT FINDINGS**

This matter arises under the H-2A 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)(a), 1184(a), (c), and 1188, and the implementing regulations found at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

By letter dated February 20, 2018, the Assistant District Director, Office of the Wage and Hour Division, U.S. Department of Labor, issued a determination letter to Respondent computing back wages (“BW”) totaling \$41,803.30 and assessing a civil money penalty (“CMP”) in the amount of \$74,605.50 for violations of the INA during the periods of November 1, 2016 through June 4, 2017. By letter dated March 19, 2018, Respondent timely requested a hearing on the assessment of the CMP.

On April 3, 2019, the Administrator filed an *Order of Reference*. Also on April 3, 2019, the Administrator filed *Consent Findings*:

1. This action arises under the Immigration and Nationality Act (“Act”) Act, 8 U.S.C. § 1101, et seq. hereinafter the Act, and Regulations found at 29 C.F.R. Part 501 for final administrative determination of violations, computation of back wages, and assessment of civil money penalties under the INA. 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 an investigation conducted by the Wage and Hour Division (“WHD”) covering the period of November 1, 2016 to June 4, 2017.
3. On February 20, 2018, the Administrator issued a Determination Letter to Respondent notifying Respondent of WHD’s findings, computed back wages, and assessed CMPs.

4. Within the time period provided by 29 C.F.R. § 501.33, Respondent filed a Request for Hearing with respect to all claimed violations, the claimed back pay, and assessment of CMPs set forth in the February 20, 2018 Determination Letter.
5. Respondent has failed to pay any of the back wages or assessed CMPs outlined in the February 20, 2018 Determination Letter.
6. The Parties have conferred and have executed these Consent Findings and Order to resolve all outstanding claims including claims for back wages and assessment of the CMPs. Respondent agrees to pay and Administrator amends the aforesaid February 20, 2018 Determination Letter to allege the Respondent owes \$19,908.68 in H-2A back wages, and the Administrator amends the aforesaid February 20, 2018 Determination Letter to allege that Respondent owes \$37,302.75 in CMPs. The parties are agreed that there shall be no debarment issued or implemented in this case.
7. Respondent agrees to pay H-2A back wages and H-2A CMPs, listed in Paragraph 6, which total \$57,211.43. The Respondent will submit quarterly payments, which include applicable interest, as outlined in the table below.¹ Respondent shall submit the Initial Payment (“IP”) and Payment No. 1 to the Administrator by Certified check or Money Order via manner that can be verified to: U.S. Department of Labor, Wage and Hour Division, Tampa District Office, 4200 W. Cypress St., Ste. 444, Tampa, FL 33607, Attn: Linda Spearman. The remaining payments, Payment No. 2 through No. 8, shall be submitted electronically by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/75522411>, or by going to www.pay.gov and searching WHD CMP Payment – SE Region.

Payment No.	Date Due	Principal	Interest Due	Total Due
<i>Initial Payment (“IP”)</i>	TBD (60 Days)	\$14,302.85	n/a	\$14,302.85
1	TBD (30 Days from IP) ³	\$5,605.83	\$7.01	\$5,612.84
2	TBD (90 Days from previous)	\$5,512.54	\$87.46	\$5,600.00

¹ The Initial Payment (“IP”) and Payment No. 1 will be applied to and will satisfy the agreed BWs owed. The remaining payments, Payment No. 2 through 8, will be applied to and satisfy the outstanding CMPs. The Initial Payment will be due within sixty (60) days of the issuance of the Order approving these Consent Findings and Order by the assigned Administrative Law Judge.

3	TBD (90 Days)	\$5,529.94	\$70.06	\$5,600.00
4	TBD (90 Days)	\$5,547.39	\$52.61	\$5,600.00
5	TBD (90 Days)	\$5,564.88	\$35.12	\$5,600.00
6	TBD (90 Days)	\$5,582.42	\$17.58	\$5,600.00
7	TBD (90 Days)	\$5,594.25	\$5.75	\$5,600.00
8	TBD (90 Days)	\$3,971.33	\$1.96	\$3,973.29
TOTALS		\$57,211.43	\$277.55	\$57,488.98

8. 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 Treasury Tax and Loan Account rate on any payment not received by the due date, as outlined in paragraph seven (7), accruing daily from the first day of default. A penalty at the rate of 6% will be assessed daily on any payment not paid within thirty (30) days of the payment's original due date, beginning on the thirty-first day of default.
9. In the event that any of such monies cannot be so distributed within the period of three (3) years from the date hereof, because of inability to locate the proper persons or because of such persons' refusals to accept them, such amounts shall be deposited into the Treasury of the United States as miscellaneous receipts.
10. If Respondent fails to provide payment for the outstanding back wages and CMPs to the Administrator as outlined in sections seven (7) and eight (8), then the Administrator will void the amendment of CMPs referenced in paragraph six (6). The initial amount of CMPs assessed in the February 20, 2018 Determination Letter will be fully reinstated and due immediately, but no later than sixty (60) days from the first day of default, to the Administrator along with the remaining balance of the back wages, if any.
11. These Consent Findings and Order disposing of this proceeding with respect to the matters referenced herein shall have the same force and effect as an Order made after a full hearing.

12. The entire record forming the basis on which the Consent Findings and Order is entered shall consist of the Determination Letter dated February 20, 2018 and the provisions and amendments contained herein.
13. The parties hereby waive all further procedural steps between themselves before the Administrative Law Judge with respect to the issues raised herein. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.
14. The violations alleged in the Determination Letter issued by the Administrator and referenced herein are and shall be deemed fully resolved by these Consent Findings and Order with regard to all parties upon approval by the Administrative Law Judge. There are no further issues for litigation.
15. 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.
16. Pursuant to 29 C.F.R. § 501.22, Respondent withdraws its Request for Hearing filed in this matter regarding the findings in the Determination Letter dated February 20, 2018 upon the approval of these Consent Findings and Order by the assigned Administrative Law Judge. The Administrator's amendment to the Determination Letter, resulting in an amended CMP amount of \$37,302.75, shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33 upon the approval of the Consent Findings and Order by the assigned Administrative Law Judge. Nothing in these findings shall be deemed an admission by Respondent of any of the allegations contained in any of the Administrator's Determination Letters.
17. However, if Respondent fails to adhere to the terms and conditions of paragraphs six (6), seven (7) and eight (8) of this Consent Findings and Order, then the Administrator's amendment of the CMP, is void and the original Determination Letter dated February 20, 2018 shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33.
18. 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.
19. 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.
20. 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.

21. These Consent Findings and Order shall constitute the final Administrative Order in this case with respect to all issues raised herein.

29 C.F.R. § 501.40(d) provides that the presiding Administrative Law Judge shall accept any agreement containing consent findings if he or she is “satisfied with its form and substance.” After reviewing its terms, I am satisfied that the agreement conforms to the requirements set forth in § 501.40(b)(1)-(4) and is a satisfactory resolution of the issues previously contested.

The terms of the *Consent Findings* filed on April 3, 2019 are APPROVED, and adopted and incorporated in full into this Order. This case is hereby DISMISSED.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.