



UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Morton Bassan Jr. d/b/a
Ka'u Gold Orange Company

Case No. 92-TAE-6

upon a request for a
hearing regarding the
assessment of back wages
and other monies owing
and assessment of a
money penalty under
29 CFR Part 501

**ORDER APPROVING
CONSENT FINDINGS**

Upon consideration of the Consent Findings on file herein and good cause appearing therefrom, IT IS HEREBY ORDERED:

- (1) That the proposed Consent Findings are hereby incorporated by reference herein and approved.
- (2) That the civil money penalty assessment and back wage assessment against Respondent, as amended by the said Consent Findings, be affirmed as final orders.

DATED: 7-7-93

HONORABLE ROBERT G. MAHONY
Administrative Law Judge

DANIEL W. TEEHAN
Regional Solicitor
JAN M. COPLICK, Attorney
OFFICE OF THE SOLICITOR
UNITED STATES DEPARTMENT OF LABOR
71 Stevenson Street, Suite 1110
San Francisco, California 94105
Telephone: (415) 744-6675

Attorneys for the Plaintiff

UNITED STATES DEPARTMENT

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
Morton Bassan Jr. d/b/a)	
Ka'u Gold Orange Company)	Case No. 92-TAE-6.
)	
upon a request for a)	
hearing regarding the)	STIPULATION FOR
assessment of back wages)	CONSENT FINDINGS
and other monies owing)	AND ORDER THEREON
and assessment of a)	
money penalty under)	
29 CFR Part 501)	

The parties to this action, pursuant to 18.9 and 29 C.F.R. Section 501.40, hereby agree stipulation and to entry of the Order on the hereinbelow: 29 C.F.R. Section to the following terms set forth

The Order issued shall be consistent with these Consent Findings and have the same force and effect as an order made after full hearing.

The entire record on which the Order is based shall consist solely of the Notice of Determination dated July 29, 1991 and amended by the Order of Reference filed herein on March 17, 1992, together with the Notice of Determination dated April 6, 1992, both as further amended hereby..The parties hereby waive any further procedural steps before the Administrative Law Judges, and waive any right to challenge or contest the validity of these stipulations and the Order entered into in accordance with this agreement.

I.

Respondent Morton Bassan Jr. doing business as Ka'u Gold Orange Company (hereafter "Respondent") has his place of residence and main office at Ka'u, Island of Hawaii, Hawaii, where at all times herein relevant Respondent had obtained H-2A certification pursuant to the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq., hereafter "the Act") and 29 C.F.R. Part 501, and was thereby employing non-resident aliens for the harvest of his citrus crop.

II.

By Notice of Determination dated July 29, 1991 and amended by the Order of Reference filed herein on March 17, 1992, together with the Notice of Determination dated April 6, 1992,

all of which were issued pursuant to Section 301 of the Act (8 U.S.C. Section 1188) and in accordance with 29 C.F.R. Part 501, Respondent was notified of the assessment of a civil money penalty in the total amended amount of \$98,500 (hereafter the "penalty assessment"), and enforcement of contractual obligations including the collection of unpaid wages and other monies owing in the additional amended amount of \$70,424.67 (hereafter the "back wage assessment"), as a result of Respondent's alleged violations of the Act and regulations thereunder at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

III.

Respondent timely filed requests for hearing as to both the penalty assessment and the back wage assessment, contesting the alleged violations and the proposed penalties therefor, and back wage assessment in accordance with the Act and regulations issued pursuant thereto. These matters were thereafter duly referred to the Office of Administrative Law Judges for hearing and consolidation, to determine the existence of the alleged violations and monies owing and the appropriateness and reasonableness of the penalty assessed, in accordance with such regulations.

IV.

Plaintiff, upon further consideration of all of the surrounding facts and circumstances, hereby agrees to amend and does hereby further amend the aforementioned back wage assessment and civil money penalty assessment herein, in accordance with the terms set forth below.

V.

A. Respondent hereby agrees to pay \$ 12,511.11 as a civil money penalty assessment for the violations alleged in the penalty assessment, as amended by these Consent Findings. This civil money penalty shall be payable within ten (10) days of the entry of the Order approving these Consent Findings by the Administrative Law Judge herein. The said civil money penalty amount shall be paid by certified check, cashier's check, or money order drafted to the 3.order of "Wage and Hour Division - Labor" and shall be sent, together with a reference to the Respondent's name and the case number of this matter, to:

William Buhl, Regional Administrator
U. S. Department of Labor
Wage and Hour Division
71 Stevenson Street, Suite 915
San Francisco, CA 94105

B. Further, Respondent shall pay \$13,488.89 in back wages, due to those employees listed in Exhibit A to these Consent Findings, to the Plaintiff within 10 days of the entry of the Order approving these Consent Findings by the Administrative Law Judge herein.

C . The said payments are conditioned upon Plaintiff releasing to Respondent copies of the complete and most recent wage recalculations, rather than simply totals thereof, made by federal Wage and Hour investigator Ken Kim, regarding the fifteen Filipino H-2A workers. On the provision of this information by Plaintiff to Respondent, all the dates in this paragraph and in paragraphs V. -D, V. - F, and VI. - B shall be extended as necessary so as to allow Respondent 60 days to review said recalculations before meeting with Mr. Buhl.

D. No later than March 5, 1994 and in accordance with the schedule set out in subparagraph E below, Respondent shall pay to Plaintiff additional back wages either (hereafter "wage payments remaining due") amount as may be found appropriate, in in the sum of \$39,000.00 or else in such reduced his sole judgment and discretion, by Wage and Hour Regional Administrator William Buhl upon Mr. Buhl's review of written materials, if any, that may be presented to him by Respondent in accordance with Paragraph C above, and upon meeting with Respondent. Mr. Buhl shall meet with Respondent in San Francisco, California at such subsequent date as is agreeable to all parties (following Respondent's written request to him for such meeting a reasonable time in advance thereof), but in any event no later than September 30, 1993, to further review and discuss Respondent's arguments, to the extent presented to him by Respondent. The materials presented to Mr. Buhl by Respondent shall be in the sole discretion of Respondent, and may include the calculations and other documents used in the Wage and Hour investigation herein. The deadline of September 30, 1993 for the said meeting may be extended pursuant to Paragraph C above, only if necessary to permit the Respondent 60 days to review the documents provided by Plaintiff pursuant to the said Paragraph C.

E. Mr. Buhl, in consultation with the Office of the Solicitor and to the extent requested by Respondent, ,will reevaluate the calculations of wage payments remaining due under the Immigration and Nationality Act (commonly known as the "H-2A" program), 20 C.F.R. 655, and 29 C.F.R. 501, and will consider any arguments regarding said wage calculations which might be made by Respondent, and will reduce the wage calculations by such amounts, if any, which Mr. Buhl deems, in his sole judgement and discretion, to be lawful, fair and equitable under all the circumstances. Mr. Buhl is not obligated by these Consent Findings or for any other reason to offer Respondent a full evidentiary hearing or the right 5.to call witnesses or cross-examine, nor is Mr. Buhl obligated to issue findings in reaching his decision. Mr. Buhl's decision as to whether and by how much the \$39,000.00 figure of wage payments remaining due shall be reduced, if at all, will be final, and is not subject to review on substantive or procedural grounds.

F. On or before October 30, 1993, Mr. Buhl will issue a letter stating what, if any, reductions he finds appropriate from the \$39,000.00 wage payments remaining due, and any such reduction shall then be deemed subtracted from the \$39,000.00 wage payment remaining due. Such final back wage amount (up to a maximum of \$39,000.00) shall be paid by Respondent in four equal monthly installments beginning on December 5, 1993, each installment to be paid no later than the fifth day of each subsequent month, and in any event with the entire balance to be paid no later than March 5, 1994. The failure of Respondent to pay any such installment payment by the deadline therefor will cause any remaining balance to become immediately due and payable.

VI.

A. All payment of back wages shall be by certified checks, cashier's checks, or money orders drafted to the order of "Wage and Hour Division - Labor" and shall be sent to:

William C. Buhl, Regional Administrator
U. S. Department of Labor
Wage and Hour Division
71 Stevenson Street, Suite 915
San Francisco, CA 94105

B. The plaintiff, after making legally-mandated employee deductions for social security and federal withholding taxes, shall distribute the proceeds of Respondent's remittances to and among, in the sole discretion of the plaintiff, the employees named in Exhibit A hereto or to their estates, if that is necessary. Any money not so paid within one (1) year after the date of the entry of the Order approving these Consent Findings for any reason, including but not limited to inability to locate said employees or their refusal to accept said proceeds, shall be deposited with the Treasurer of the United States.

VII.

Respondent will make a good faith effort to comply in the future with all applicable labor provisions of the Immigration Reform and Control Act of 1986 (8 U.S.C. Sections 1101(a) (15) (H) (ii) (a), 1184(c) and 1186; hereinafter "the Act"), 29 C.F.R. Part 501 and 29 C.F.R. 655.

VIII.

A. Respondent hereby withdraws his contest request for hearing as to both the penalty assessment and of and the back wage assessment, as amended hereby. Respondent understands and agrees that as a result of these Consent Findings, the aforesaid amended assessments shall become final and unappealable orders.

B. It is expressly agreed and understood that the settlement reflected in these Consent Findings is in full settlement of any and all claims between the parties, and further that nothing herein constitutes a finding or admission that Morton Bassan, Jr. or the Ka'u Gold Orange Company violated any law, regulation, policy or agreement with any branch of the federal or state government.

IX.

Plaintiff views Respondent's payment of settlement monies in accordance with these Consent Findings as fully satisfying Respondent's monetary obligations to its former employees arising under this action. Moreover, in the event of any future inquiries from the Departments of Justice or State or any other source regarding Respondent's payment to these former employees, Plaintiff will cooperate with Respondent in advising any and all such agencies or persons that the

herein stated payments by Respondent to Plaintiff, on behalf of the said former employees, were made in the United States, rather than through offices in the Philippines or elsewhere, at Plaintiff's insistence.

//
//
//
//
//
//
//
//
//
//
//

X.

Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

DATED: 6/24/93 THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

DANIEL W. TEEHAN
Regional Solicitor

BY
JAN M. COPLICK
Attorneys for the Plaintiff
U. S. Department of Labor

DATED: 6/17/1993 TORKILDSON, KATZ, JOSSEM, FONSECA, JAFFE,
MOORE & HETHERINGTON
Attorneys for Respondent

BY
JARED JOSSEM
Attorney (not a party)

DATED: 6/17/1993 MORTON BASSAN JR. individually and as
doing business as
Ka'u Gold Orange Company, Respondent

MORTON BASSAN JR.

EXHIBIT A TO CONSENT FINDINGS

Jose A. Agbayani
Geronimo Borbos
Fernando Corpuz
Violy DelaCruz
Danny L. Inocencio
Jerry L. Inocencio
Rodrigo F. Lorenzo
Bienvenido S. Marasigan
Nicolas Mendoza
Juan S. Obenia
Miguel A. Rosario
Rodulfo R. Rosario
Jovencio S. Salmo
Alvaro S. Serdenia
Eligio D. Yadao
Fernando C. Cruz
Jorge J. Ramos
Luis Arnoldo Ruiz
Luis A. Bertozzi
Chris C. Christensen
Mercedes DelaCruz
Raymond Kaaihue
Juliano Alinea
Ismael Aguilar
James Balai
Luis Bertozzi
Madeline Bontea
Titus Bontea
Sean Burch
Francisco Cariaga
Leslie Carvalho
Curtis E. Christensen
Eufemia S. Cruz
Felix F. Cruz
Michael DeCoito
Alejandro Dela Cruz
Mercedes DelaCruz
Arturo A. Delgado
Jose S. Feliciano
Carrie L. Ferren
Dana L. Ferren
David N. Froula
Adelia F. Galiza

Russell W. Gardpipe
Rosario J. Gutierrez
Dennis B. Hoiland
Raymond Kaaihue
Warren A. Kepano
John A. Larrivee
Brett R. Llanes
Sharon Madsen
Joel V. Mateo
Andrew W. McBride
Corazon S. Mercado
Perfecto J. Mercado
Gilberth Molina
Fernando C. Morales
Francisco Perez
Jorge L. Ramos
Luis A. Ruiz
Benjamin S. Salmo
Maria O. Salmo
Epifanio N. Santana
Regina Simon
Roy K. Surigao
Rolando Vazquez
Shane O. Youngblood