

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:)	CAC No. 18-002-02(T)
Department of Labor Enforcement Section,)	
Complainant,)	ADMINISTRATIVE ORDER
v.)	
)	
Huachang Corporation,)	
<i>dba</i> 168 Poker,)	
Respondent.)	
)	

This Compliance Agency Case came on for hearing on June 4, 2018, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department of Labor Enforcement Section was represented by investigator Ramona Cabrera-Viches and Earl Borja. Respondent Huachang Corporation appeared through its corporate Secretary, Lu, Xuanbo. Ms. Wu, Shao Wen served as translator for Respondent. Hearing Officer Jerry Cody, presiding. [The hearing was conducted via an internet connection with the Hearing Officer and Ms. Lu in Saipan and the remaining parties located in Tinian.]

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Determination, Notice of Violation and Notice of Hearing (“Determination”) filed by the Department of Labor Enforcement Section (“Enforcement”) in the Hearing Office on May 11, 2018, against respondent Huachang Corporation, *dba* 168 Poker (“Employer”). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The Determination alleges that Employer failed to post job vacancy announcements (“JVAs”) for two jobs in Gaming Service on the DOL website, in violation of Employment Rules and Regulations. See Regs. at NMIAC § 80-20.1-225(a).¹

¹ Enforcement also charged that Employer had failed to pay a small amount of wages on September 30, 2017, the day the federally-mandated minimum wage increased to \$7.05 per hour, but later Enforcement moved to strike its charges after Employer established that it had paid proper wages on that day. [Testimony of Ms. Cabrera-Viches.] At hearing, the Hearing Officer granted Enforcement’s Motion to Strike ¶¶ 6-8 of the Determination.

Employer owns and operates a poker game room (168 Poker) located on Tinian. Employer currently employs 3 full-time employees: one U.S. citizen, one CW-1 worker and one holders of an EAD (Employment Authorization Document). In late 2017, Employer employed two CW-1 status workers; however one worker (Lin, Feiqiong) resigned from the company in January 2018. [See Respondent's Total Workforce Listing for the 4th Quarter of 2017, entered into evidence as Hearing Exhibit 3.]

I. Failure to Post Job Vacancy Announcements:

The Employment Rules and Regulations state that an Employer who intends to hire or renew a foreign national worker on a full-time basis “must” post the job vacancy announcement on DOL’s website. [Regs. codified at the Northern Mariana Islands Administrative Code (“NMIAC”) at § 80-20.1-225(a).]² There are no waivers available with respect to this requirement. *Id.* at NMIAC § 80-20.1-225(e).

At hearing, Employer admitted that it failed to post JVAs for the two jobs that it filled with CW-1 status workers in 2016 and 2017, as alleged in the Determination. [Testimony of corporate Secretary Lu, Xuanbo.] In 2016 and 2017, Employer petitioned USCIS to employ two CW-1 workers – Lin, Feiqiong and Lie, Lou - for Gaming Service jobs and USCIS approved those Petitions. Employer went on to employ both workers from 2016 through all of 2017. [Respondent’s Total Workforce Listings for all 4 quarters of 2017, were entered into evidence collectively as Hearing Exhibit 3.]

When Employer was asked why it failed to utilize the DOL website in 2016, Secretary Lu stated that she had not known that employers were required to use DOL’s website at that time. Instead, Employer advertised the job vacancies in on a local radio station for 4 days in March 2017. [See Letter from KWA FM100.3 to USCIS, dated March 20, 2017, which was entered into evidence as Hearing Exhibit 4.]

As has been the case for five years, DOL continues to take the position that employers are required to post job vacancies on DOL’s website for full-time jobs

² NMIAC § 80-20.1-225(a) states: “An employer who intends to employ a foreign national worker, transitional worker, or nonimmigrant alien on a full-time basis (under any new employment arrangement, any renewal of any existing employment arrangement, or any transfer) must post a job vacancy announcement on the Department’s website, www.marianaslabor.net.”

that might be filled by CW1 workers. Enforcement filed the present Determination after it examined the Total Workforce Listings (Hearing Exhibit 3) that noticed that Employer was employing CW-1 status workers for who it had not posted JVAs on DOL's website. [Testimony of Ms. Cabrera-Viches.]

After Employer received the Determination from Enforcement, it began posting JVAs on the DOL website. At hearing, Employer noted that it plans to utilize the DOL website in the future. [Testimony of Ms. Lu.]

Holding: Employer violated DOL Regulations [NMIAC § 80-20.1-225(a)] by failing to post JVAs on DOL's website for positions filled by two CW1 workers in the years of 2016-17 and 2017-18. For this conduct, Employer should be sanctioned as set forth below.

II. Sanctions:

Enforcement's Determination recommended that Employer be sanctioned with the maximum fine of \$2,000 for each of its violations. Department Regulations leave the decision on the amount of sanctions to the Hearing Officer's discretion. 3 CMC § 4528(f)(2). In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed \$2,000 for each violation. *Id.*

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that "[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings." Regs. at NMIAC § 80-20.1-485(c)(14).

The Hearing Officer finds that the facts here do not justify the maximum sanction. Past cases in which the \$2,000 sanction was imposed have involved evidence that the Employer had willfully disregarded its legal obligations to search for available U.S. citizens or permanent residents. (See, e.g., CAC No. 14-008-03, *Dept. of Labor Enforcement Section v. RJCL Corporation*, Admin. Order by J.Cody on 4/07/2014, *aff'd* by Secretary of Labor on 4/29/2014.)

The evidence presented in this case established two counts of a basic violation: Employer's failure to post JVAs on DOL's website in violation of DOL Regulations at NMIAC § 80-20.1-225(a). Although Employer did not utilize the DOL website; it did advertise the jobs using a local radio advertisement. Employer

testified that her failure to use the DOL website was due to her lack of knowledge of local Regulations, rather than an intentional plan to evade following CNMI labor laws and regulations. Furthermore, Employer testified that in the future Employer would post all of its JVAs on DOL's website in accordance with DOL Regulations. Based on the evidence presented taken together with the above-noted mitigating factors, the Hearing Officer finds it appropriate to assess a sanction against the Employer of \$750 for its failure to post JVAs for a two-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

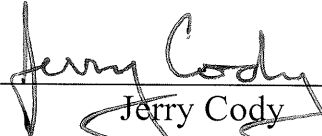
1. **Judgment:** Based on the above findings, Respondent Huachang Corporation is found to have violated DOL Regulations by failing to post JVAs on the DOL website. [Regs. at NMIAC § 80-20.1-225(a).] For this conduct, Respondent is SANCTIONED as set forth below.

2. **Sanctions:** Respondent Huachang Corporation is hereby SANCTIONED seven hundred and fifty dollars (\$750) for its conduct. Respondent is ORDERED to pay the fine (by check made payable to the CNMI Treasury) no later than **thirty (30) days** after the date of issuance of this Order. Proof of payment shall be submitted to the Hearing Office on or before the due date. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Posting on Website and Interview of Referrals:** Respondent Huachang Corporation is ORDERED to post all job vacancies and job renewals in the future on the Department's website (www.marianaslabor.net), in accordance with Regulations at NMIAC § 80-20.1-225(a). Respondent shall be required to interview and consider for hiring any referrals of U.S. citizens or permanent residents when they are qualified and available to work.

4. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: June 5, 2018



Jerry Cody
Hearing Officer