

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

In the Matter of:)	CAC No. 16-013-10
Department of Labor)	
Enforcement and Compliance Section,)	
Complainant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Li's Limited Corporation,)	
<i>dba</i> U Save Car Rental/Lucky Tour,)	
Respondent.)	
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This Compliance Agency Case came on for hearing on January 31, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department of Labor Enforcement and Compliance Section was represented by James Ulloa. Respondent Li's Limited Corporation failed to appear despite being served with legally sufficient notice of the hearing. Mr. Rio S. Mostales testified in support of Complainant. Hearing Officer Jerry Cody, presiding.

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 and Compliance Section ("Enforcement") in the Hearing Office on December 6, 2016, against respondent Li's Limited Corporation, *dba* U Save Car Rental/Lucky Tour ("Employer"). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The Determination alleges that Employer failed to comply with several Department regulations:

- (1) Employer failed to post two job vacancy announcements in 2015 and 2016 in violation of CNMI Rules and Regulations ("Regs."), codified in the Northern Marianas Administrative Code ("NMIAC") at § 80-20.1-225(a).

- (2) Employer failed to file quarterly Total Workforce Listings for the 4th quarter of 2015 and the 2nd and 3rd quarters of 2016. Regs. at NMIAC § 80-20.1-505(a-c).
- (3) Employer failed to submit a Workforce Plan with the Department for 2015. Regs. at NMIAC § 80-20.1-510.

Employer failed to appear at the Hearing and shall be deemed in default.

Enforcement served Employer with the Determination by mailing a copy of the Determination, Notice of Violation and Notice of Hearing to Employer's Registered Agent on December 7, 2016. [Testimony of Mr. Mostales.]¹ The envelope was addressed to Registered Agent, Li Liang, who was listed as Employer's registered agent in the latest Annual Corporate Report on file at the Registrar of Corporations. Mr. Li, Liang is also listed on the Annual Corporate Report as the President/Secretary and sole shareholder of the corporation. [Proof of Service at Hearing Exhibit 2, and Annual Corporate Report at Hearing Exhibit 3.] This evidence establishes that Employer was properly served with legally sufficient notice.

Holding: Employer failed to appear at Hearing despite being properly served with legally sufficient notice. Based on the evidence presented, the Hearing Officer found Employer to be in default.² After making this finding, the Hearing Officer proceeded to take evidence to determine whether Enforcement could establish its prima facie case against Employer.

Based on Employer's latest filed Total Workforce Listing, Employer's workforce consists of three individuals: President Li Liang and two car rental agents, both of whom are CW-1 status workers who began working for Employer in October 2015. [Hearing Exhibit 4 (Total Workforce Listing, signed on 4/10/2016).]

¹ Mr. Mostales is an employee of the Department of Labor. He testified that he sent the Determination by mail to the Registered Agent on December 7, 2016, at the address listed on the copy of the envelope attached to the Proof of Service. (See Proof of Service and copy of attached envelope at Hearing Exhibit 2.)

² The Regulations regarding "default" state that: "Except for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party defaults, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate. Regs. at NMIAC § 80-20.1-480(l).

1. Posting JVAs on DOL's Website:

Department 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 the Department’s website. Regs. at NMIAC § 80-20.1-225(a). There are no waivers available with respect to this requirement. Regs. at NMIAC § 80-20.1-225(e).

The evidence shows that Employer began employing two foreign national workers as full-time car rental agents in October 2015; however, Employer failed to post JVAs for those positions on DOL’s website in 2015 and 2016. See Hearing Exhibit 4 (Total Workforce Listing, signed by Li, Liang on April 10, 2016).³ See Hearing Exhibit 5 - a DOL printout showing all active or expired JVAs filed by Employer since 2011. This document shows that Employer posted no JVAs in 2015 and 2016.⁴

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to post JVAs for the car rental agent positions in 2015.

2. Quarterly Total Workforce Listings:

DOL Regulations require employers to submit information *on a quarterly basis* regarding “the number and classification of employees for whom wages were paid during the quarter.” Regs. at NMIAC § 80-20.1-505(b). This information is submitted in a document called the Total Workforce Listing. The Department requires employers to submit this information in order to qualify for a Certification of Compliance. [Testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for the 4th quarter of 2015, as well as the first and second quarters in 2016. In response to a document request from DOL, Employer did submit a Total Workforce Listing for the 1st Quarter of 2016. [A copy of the Total Workforce Listing, signed by Li Liang on April 10, 2016, was entered into evidence at Hearing Exhibit 4.]

³ On this Total Workforce Listing, Employer listed that the two CW-1 workers began working in October 2015 and were still working as of April 2016. *Id.* It is not known whether these workers are still in the employ of Employer.

⁴ Because Employer failed to submit more recent Total Workforce Lists later in 2016, and failed to attend the hearing, Enforcement does not know whether these two CW-1 status employees continued to work for Employer throughout 2016, whether they obtained a renewal of their CW-1 status in 2016, or whether they continue to work for Employer until the present.

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to file quarterly Total Workforce Listings in 2015 and 2016.

3. Workforce Plan for 2015:

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] The evidence shows that Employer never submitted a Workforce Plan to DOL in 2015. Although the Employer did submit a Workforce Plan for 2016 on April 10, 2016, it is completely deficient given that half of the form is left blank. [Testimony of Mr. Ulloa; Hearing Exhibit 6 (copy of Employer's Workforce Plan for 2016).]

Based on the evidence, Enforcement moved for sanctions against Employer for failing to submit a Workforce Plan in 2015.

CONCLUSIONS OF LAW

The evidence established that: (1) Employer failed to post job announcements on DOL's website for two positions in 2015, which were then filled by CW-1 status employees; (2) Employer failed to file quarterly Total Workforce Listings in 2015 and 2016; and (3) Employer failed to submit a Workforce Plan for 2015. As stated, Employer failed to appear at this Hearing to provide testimony as to the reasons for its conduct. Enforcement presented evidence establishing its prima facie case against Employer. Accordingly, the Hearing Officer finds that Employer committed each of the three violations summarized above. [Regulations at NMIAC §§ 80-20.1-225(a), 505(b) and 510.]

Given that these numerous failures constitute multiple violations of DOL Regulations, the Department asked that Employer be sanctioned with the maximum monetary penalties for the conduct.

Sanctions: In its Determination, Enforcement asked that Employer be sanctioned with the maximum fine of \$2,000 for each violation. [Hearing Exhibit 1 at p. 3.] [Testimony of Mr. Ulloa.]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized to levy a fine not to exceed \$2,000 for each violation. 3 CMC § 4528(f)(2).

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 the inherent powers ...to further the interests of justice and fairness in proceedings.” Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14).

The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified. In this case, the evidence established that Employer violated numerous regulations – failing to post JVAs for two jobs in 2015, failing to submit numerous Total Workforce Listings in 2015 and 2016, and failing to update its annual Workforce Plan in 2015. The Hearing Officer agrees that these numerous deficiencies justify a substantial penalty. It is difficult for the Hearing Officer to consider any mitigating factors, given that Employer neglected to attend the Hearing. However, the Hearing Officer finds that these violations are of various levels of severity. The failure to post JVAs on DOL’s website is particularly egregious as it has deprived the local work force of employment opportunities.

Based on the above facts and circumstances, the Hearing Officer concludes as follows: First, for failing to post two JVAs in 2015, Employer should be sanctioned the maximum penalty of two thousand dollars (\$2,000). Second, for failing to submit various Total Workforce Listing Documents, Employer should be sanctioned two thousand dollars (\$2,000); however, \$1,000 of that amount shall be suspended for a one-year period, then extinguished, provided that Employer commits no further violations of labor statutes and regulations during the one-year period. Third, for failing to submit a Workforce Plan for 2015 and for submitting a deficient Workforce Plan for 2016, Employer shall be given a suspended sanction of five hundred dollars (\$500). Total sanctions amount to \$4,500 with \$3,000 due and payable within 30 days and the remaining amounts suspended. Finally, Employer shall be ordered to file to submit its current Total Workforce Listing for the 4th Quarter of 2016, no later than 30 days after the date of issuance of this Order.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Li’s Limited Corporation for numerous violations of the Employment Rules and Regulations, as set forth above. For these violations, Respondent shall be sanctioned in the manner set forth below.

2. **Sanctions:** For the above-described conduct, Respondent Li's Limited Corporation is hereby SANCTIONED in the total amount of four thousand, five hundred dollars (\$4,500); however, \$1,500 of that amount shall be SUSPENDED for one year, then extinguished, on the condition that Respondent commits no further violation of labor statutes and regulations in that one-year period, and complies with the terms of this Order as set forth herein. Respondent is ORDERED to pay the remaining sanctions of \$3,000 within 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 dates. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **Total Workforce Listing:** Respondent Li's Limited Corporation is ORDERED to submit its Total Workforce Listing for the 4th quarter of 2016, by delivering copies of the document to the Enforcement and Compliance Office and to the Hearing Office no later than 30 days after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-505(b).]

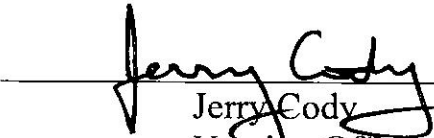
4. **Updated Workforce Plan:** Respondent Li's Limited Corporation is ORDERED to submit an updated and complete Workforce Plan for 2017, by delivering copies of the document to the Enforcement and Compliance Office and to the Hearing Office no later than 30 days after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-510).]

5. **Future Compliance with DOL Regulations:** Respondent Li's Limited Corporation is ORDERED to post accurate job vacancies and job renewals in the future on the Department's website in accordance with Regulations at NMIAC § 80-20.1-225(a).

6. **Reinstated Sanctions:** Respondent is warned that the Regulations described in this order set forth *continuing* obligations of the Employer. Any failure by Respondent to comply with the terms of this Order, including a failure to file timely census-related documents (Total Workforce Listings) in the future, may result in the reinstatement of the suspended sanctions after a due process hearing.

7. **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: February 1, 2017


Jerry Cody
Hearing Officer