

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

In the Matter of:)	CAC No. 17-002-02
Department of Labor Enforcement)	
and Compliance Section,)	
Complainant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Silk Road Corporation,)	
<i>dba</i> Saipan Country Club,)	
Respondent.)	
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This Compliance Agency Case came on for hearing on March 20, 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 Manny Iguel. Respondent Silk Road Corporation, *dba* Saipan Country Club, appeared through its agent’s attorney, Jordan Sundell. 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 February 22, 2017, against respondent Silk Road Corporation, *dba* Saipan Country Club (“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 a post job vacancy announcements (“JVAs”) on the Department of Labor website (www.marianaslabor.net) for the job of bookkeeper in 2017 in violation of CNMI Employment Rules and Regulations (“Regs.”), codified in the Northern Marianas Administrative Code (“NMIAC”) at § 80-20.1-225(a). [Hearing Exhibit 1 at ¶ 2.]

- (2) Employer failed to post numerous “Employer Declarations” on the DOL website in 2016, in connection with JVAs posted for the jobs of General Manager, Bookkeeper, Mechanic and Greenskeeper. Regs. at NMIAC at § 80-20.1-235(e). [Hearing Exhibit 1 at ¶ 5.]
- (3) Employer failed to submit quarterly Total Workforce Listings for 2015 and 2016 to the Department in accordance with Regulations at NMIAC § 80-20.1-505(b). [Hearing Exhibit 1 at ¶ 8.]
- (4) Employer failed to submit Workforce Plans to the Department in 2015, 2016 and 2017. Regs. at NMIAC § 80-20.1-510(c). [Hearing Ex. 1 at ¶ 9.]

Employer sent an attorney, Mr. Jordan Sundell, who works for Bridge Capital, LLC (“Bridge Capital”) to represent Employer at the Hearing. Mr. Sundell reported that Silk Road Corporation was sold to MP Holdings LLC on June 3, 2016. Subsequently, Bridge Capital was hired to perform human resources functions, among other things, for Silk Road Corporation. Mr. Sundell confirmed that he is employed by Bridge Capital and that he and his staff manage certain human resources functions on behalf of Silk Road Corporation. [Testimony of Mr. Sundell.]

Employer operates a country club, known as “Saipan Country Club,” on Saipan. In the latter half of 2016, Employer employed 8 full-time employees – 5 CW-1 status employees, 2 U.S. citizens and one U.S. permanent resident. [Hearing Exhibit 4 consists of Employer’s Total Workforce Listings for all 4 quarters of 2016. These documents were submitted post-hearing on 3/27/2017.]

1. Failure to Post Job Announcement 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 JVA on the DOL’s website. Regs. at NMIAC § 80-20.1-225(a). There are no waivers available with respect to this requirement. *Id.* at § 80-20.1-225(e).

In its Determination, Enforcement charged that in February 2017, Employer had failed to post a JVA on DOL’s website for the job of bookkeeper. [Hearing Exhibit 1 at ¶ 2.] Enforcement decided to file this charge after reading a newspaper advertisement that Employer placed in the Saipan Tribune on February 15, 2017. [Testimony of Mr. Iguel; Hearing Exhibit 2 – a copy of the Saipan Tribune advertisement published online on 2/15/17.]

At Hearing, Employer testified that immediately after advertising the bookkeeper job in the Saipan Tribune, Employer decided not to fill the position. It was for this reason that Employer never posted the job on DOL's website. [Testimony of Mr. Sundell.] Mr. Sundell apologized for not notifying the Department of Labor after Employer decided not to pursue the hiring of a bookkeeper.

2. Failure to Post "Employer Declarations" As to Prospective Job Applicants.

The Department's "Employer Declaration" Regulation requires an employer to post an online "declaration" on the Department of Labor ("DOL") website (www.marianaslabor.net) in cases where the employer has rejected a U.S.-status qualified worker for a particular job and instead, hired a foreign national worker for the position. [Regs. at NMIAC § 80-20.1-235(e).] In such cases, the regulation requires the employer to post a short response on the website, explaining: (1) the action it took with respect to each applicant who posted a response to the job vacancy; and (2) the reason(s) why that person was not hired for the position. *Id.*

In its Determination, Enforcement charged that Employer had failed to post Employer Declarations in connection with JVAs for four positions: General Manager, Bookkeeper, Mechanic and Greenskeeper. [Hearing Exhibit 1 at ¶ 5.]

On June 22, 2016, Employer posted JVAs on DOL's website for four jobs: General Manager, Bookkeeper, Mechanic and Greenskeeper. Department records show that Employer failed to post online responses or "declarations" to any of the four JVAs. [Printouts of these JVAs, listing the responses, were entered into evidence as Hearing Exhibits 3(a), 3(b), 3(c) and 3(d), respectively.]

At Hearing, Employer admitted that it never posted responses to the online responders; however, Mr. Sundell represented that his staff had reviewed all of the responses and found that none of the responders were qualified for the posted jobs. [Testimony of Mr. Sundell.] Mr. Sundell represented that Employer's agent, Bridge Capital, had not understood that after reviewing the JVA responses, it was required to file online responses to each responder, informing the responder of the reason why he or she had not been interviewed or hired for the position. *Id.*

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to post employer declarations as to each of these four JVAs. [Regs. at NMIAC § 80-20.1-235(e).]

3. Failure to Submit 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.

At Hearing, Employer admitted that it failed to submit Total Workforce Listings for all quarters of 2015 and 2016. Employer’s response to this charge was that it was not aware until receiving the Determination that Total Workforce Listings are due on a **quarterly** basis. [Testimony of Mr. Sundell.]

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

4. Failure to Submit Workforce Plans for 2015 and 2016.

DOL Regulations require employers to file an updated Workforce Plan once every 12 months. [Regs. at NMIAC § 80-20.1-510.] In this case, Enforcement charged that Employer has not filed a Workforce Plan in 2015, 2016 and 2017.

At Hearing, Employer admitted that it failed to submit Workforce Plans for 2015, 2016 and 2017. Again, Employer’s response to this charge was that it had not known until it received the Determination, that Workforce Plans are due on an **annual** basis. [Testimony of Mr. Sundell.]

Based on the evidence, Enforcement moved for an order sanctioning Employer for failing to submit a Workforce Plan in 2015, 2016 and 2017. [Regs. at NMIAC § 80-20.1-510.]

After the Hearing, on March 27, 2017, Employer filed its Workforce Plan for 2016. It is hereby entered into evidence as Hearing Exhibit 5.

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DISCUSSION

Holding: As to the first charge that Employer failed to post a JVA for the bookkeeper position that was advertised in the Saipan Tribune in February 2017, the Hearing Officer accepts Mr. Sundell's representation that Employer decided to abandon this job search immediately after posting the advertisement. The Hearing Officer finds that Employer is not guilty of violating the "posting" Regulation as it never followed through with hiring for this position. [Regs at NMIAC §§ 80-20.1-225(a).]

Holding: As to the remaining charges, the evidence established that: (1) Employer failed to post responses with respect to four JVAs on DOL's website in 2016; (2) Employer failed to submit quarterly Total Workforce Listings in 2015 and 2016; and (3) Employer failed to submit Workforce Plans for 2015 and 2016.¹ [Regs at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

Given these violations, the Department asked that Employer be sanctioned with monetary penalties for its conduct. [Hearing Ex. 1, p. 3; testimony of Mr. Iguel.]

Employer's defense to these charges was that its agent, Bridge Capital, who now manages Human Resources and other functions at the company, was not aware it was required to file employer declarations, or Total Workforce Listings on a quarterly basis or Workforce Plans on an annual basis. [Test. of Mr. Sundell.]

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.] If this were to be accepted, it would result in a sanction of \$6,000 against Employer. At Hearing, Enforcement indicated that it would accept the Hearing Officer's discretionary ruling in this matter. [Testimony of Mr. Iguel.]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$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

¹ Given that it is only the third month of 2017, Employer should not be faulted (yet) with failing to file an annual Workforce Plan for 2017. But see Order on page 7, paragraph 3.

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 committed three basic violations. First, it failed to post employer declarations for responders to four JVAs. Second, Employer missed the deadlines for filing quarterly Total Workforce Listings in 2015 and 2016. Third, Employer missed several deadlines for filing annual Workforce Plans in 2015 and 2016.

The Hearing Officer finds that Employer’s defense – that its agent was not aware of the regulatory requirements – explains, but does not excuse, Employer’s failure to comply with the DOL regulations. Nevertheless, certain facts should be considered as mitigating factors. As to the employer declarations, Employer did not ignore, but actually reviewed the resumes (job history) of each of the responders to determine whether they were qualified. As to the missed deadlines to file census-related documents, Mr. Sundell made credible assurances that Employer’s failure to file census-related documents was an oversight rather than a deliberate attempt to circumvent the laws. Mr. Sundell assured the Hearing Officer that Employer, and its agent, would comply with these Regulations in the future. Furthermore, Employer corrected a number of the deficiencies by producing the missing documents (the quarterly Total Workforce Listings for 2016 and the 2016 Workforce Plan) one week after the Hearing. The above factors shall be taken into account in mitigating the amount of the sanctions.

Holding: Based on the evidence presented and the considerations noted above, the Hearing Officer finds that Employer should be sanctioned collectively for the above-cited violations in the total amount of \$2,000, with \$1,200 to be paid and \$800 suspended for a period of one year. The suspended sanctions shall remain in effect for a year, then they will be automatically extinguished, provided that no similar violations occur within the one-year period. Finally, Employer shall be ordered to file a Workforce Plan for 2017 within sixty (60) days.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Silk Road Corporation on the 2nd, 3rd and 4th charges of violating the Employment Rules and Regulations, as set forth in the Determination. Regs. at NMIAC §§ 80-20.1-235(e), 505(b) and 510. Judgment is entered in favor of Respondent on the 1st charge. For the violations, Respondent shall be sanctioned as set forth below.

2. **Sanctions:** Respondent Silk Road Corporation is hereby SANCTIONED a total of two thousand dollars (\$2,000) for its conduct; however, a portion (\$800) of the sanction shall be SUSPENDED for a period of ONE YEAR, then extinguished, provided that Respondent commits no violations of Department of Labor regulations or statutes in that period. Respondent is ORDERED to pay the remaining \$1,200 in sanctions 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. **2017 Workforce Plan:** Respondent Silk Road Corporation is ORDERED to submit a complete Workforce Plan for 2017, by delivering copies of the document to the Enforcement and Compliance Office (attn: Mr. Iguel) no later than **sixty (60) days** after the date of issuance of this Order. [Regs. at NMIAC § 80-20.1-510).]

4. **Reinstatement of Suspended Fine:** If Respondent fails to comply with the terms of this Order, or commits further processing-related or reporting violations, it shall be subject to a possible reinstatement of the suspended sanctions (\$1,000) plus additional monetary sanctions, after a due process hearing on this issue.

5. **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: March 29, 2017



Jerry Cody
Hearing Officer