

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

In the Matter of:)	CAC No. 17-003-03
Department of Labor Enforcement Section,)	
Complainant,)	ADMINISTRATIVE ORDER
v.)	
)	
Imperial Pacific International (CNMI), LLC,)	
<i>dba</i> Best Sunshine International,)	
Respondent.)	
<hr style="border-top: 1px solid black;"/>		

This Compliance Agency Case came on for hearing on March 21, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department’s Enforcement Section was represented by James Ulloa. Respondent Imperial Pacific International (CNMI) LLC, *dba* Best Sunshine International, appeared through its Vice President for Human Resources, Bertha Leon Guerrero, and its legal counsel, Kelley Butcher. 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 and Notice of Hearing (“Determination”), filed by the Department’s Enforcement Section on March 2, 2017. The Determination alleges that Respondent Imperial Pacific International (CNMI) LLC, *dba* Best Sunshine International (“Employer”), had failed to submit its quarterly Total Workforce Listing in a timely manner, as required by CNMI Employment Rules and Regulations (“Regs.”), codified in the Northern Marianas Administrative Code (“NMIAC”) at § 80-20.1-505(b-d). [Hearing Exhibit 1 at ¶ 1.]

At Hearing, Employer admitted that it had neglected to file its Total Workforce Listing for the 4th quarter of 2016, on or before the January 31, 2017 due date. Ms. Butcher explained that the delay in submitting the Total Workforce Listing was an oversight caused by the holidays and illnesses at the workforce rather than a deliberate attempt by Employer to circumvent the law.

Employer filed the Total Workforce Listing on March 10, 2017, about one week after being served with the Determination. Enforcement confirmed that it received Employer's Total Workforce Listing for the 4th quarter of 2016 on March 10, 2017. Enforcement found the document to be in acceptable form. [Testimony of Mr. Ulloa.]

Given that Respondent has already produced the document, the only remaining issue is the matter of requested sanctions.

DISCUSSION

It is undisputed that Respondent failed to submit its quarterly Total Workforce Listing by the deadline of January 31, 2017, in violation of the Employment Rules and Regulations at NMIAC § 80-20.1-505. Respondent noted that this was an oversight on its part rather than any deliberate attempt to circumvent the law. Respondent submitted the document to DOL on March 10, 2017, as soon as it realized that it was overdue. The Hearing Officer finds that Respondent violated the above-cited Regulation when it failed to submit the Total Workforce Listing on or before January 31, 2017.

Given the violation, the Department asked that Employer be sanctioned for its conduct. [Hearing Ex. 1, p. 3; testimony of Mr. Ulloa.]

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.] However, at the conclusion of the Hearing, Enforcement recommended that the Hearing Officer issue a suspended sanction in order to give Respondent an opportunity to demonstrate good faith compliance. [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, 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 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, Employer admitted that it failed to submit its quarterly Total Workforce Listing by the deadline of January 31, 2017, but noted that this was an oversight on its part, rather than any deliberate attempt to circumvent the law. Employer submitted the document to DOL on March 10, 2017, as soon as it realized that it was overdue. Employer has a past record of submitting census-related documents in a timely manner. As stated above, Enforcement recommended that Employer be sanctioned with a suspended fine and, in effect, given an opportunity to demonstrate full compliance in the future.

The Hearing Officer agrees that a suspended sanction is the appropriate penalty based on the facts presented in this case. Having a suspended sanction, which may be reinstated if Employer again misses a deadline to file census-related documents, will serve to keep Employer mindful of the deadlines.

Holding: Based on the evidence presented and the considerations noted above, the Hearing Officer finds that Employer should be sanctioned monetarily for the above-cited violation in the amount of \$1,000; however, the entire amount shall be suspended for a period of one year, then extinguished, provided that Employer does not violate any labor statutes or regulations during that period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Imperial Pacific International (CNMI) LLC on the charge of violating the Employment Rules and Regulations, as set forth in the Determination. [Regs. at NMIAC § 80-20.1-505.] For this violation, Respondent shall be sanctioned in the manner set forth below.

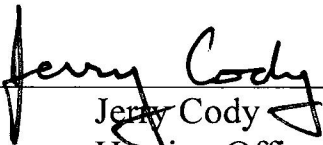
2. **Sanctions:** Respondent Imperial Pacific International (CNMI) LLC is hereby SANCTIONED one thousand dollars (\$1,000) for its conduct; however, the entire sanction shall be SUSPENDED for a period of ONE YEAR, then extinguished, provided that Respondent commits no violations of Department of Labor regulations or statutes during that period. 3 CMC §§ 4528(f)(2) and 4947(11).

3. **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.

[CAC No. 17-003-03]

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: March 27, 2017



Jerry Cody
Hearing Officer