

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

In the Matter of:)	CAC No. 17-016-11
Department of Labor)	
Enforcement and Compliance Section,)	
Complainant,)	ADMINISTRATIVE ORDER
v.)	
Xiao Tang Sanchez,)	
<i>dba</i> 24/7 Security Services,)	
Respondent.)	
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This Compliance Agency Case came on for hearing on December 18, 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 (“Enforcement”) was represented by Jeff Camacho. Respondent Xiao Tang Sanchez, *dba* 24/7 Security Services, appeared with her Manager, Osman Gani. Respondent was represented by her counsel, Mark Scoggins. 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 Enforcement on November 17, 2017, against Respondent Xiao Tang Sanchez, *dba* 24/7 Security Services (“Employer”). [A copy of the Determination and Proof of Service indicating service on 11/17/17, was entered into evidence as Hearing Exhibit 1.]

Respondent Failed To Produce Documents In A Timely Manner.

On September 26, 2017, Enforcement served Employer with a document request, known as a “Business Establishment Compliance and Monitoring Request Form,” which instructed Employer to produce certain business-related documents within ten business days (i.e., by October 11, 2017). [A copy of the Business Establishment Compliance and Monitoring Request Form, dated 9/26/17 (hereinafter, “Request”), was entered into evidence as Hearing Exhibit 2.] The Request was delivered to Employer’s Manager, Mr. Gani Osman, on 9/26/17. *Id.*

The Request was part of a legitimate administrative inspection of payroll, business license, tax and census-related information. Under the Employment Rules and Regulations (“Regulations” or “Regs.”), the “Department may conduct investigations as necessary and appropriate to enforce provisions of the Commonwealth Employment Act of 2007, as amended....” [Regs. at NMIAC § 80–20.1-445; *see also* 3 CMC § 4939(a) *et seq.*] ¹

The Request asked Employer to produce copies of the following documents:

- Total Workforce Listing
- Workforce Plan
- Employer’s Quarterly Withholding Tax for the last 4 quarters
- Payroll records for the last 4 quarters
- Tax standing from the Division of Revenue and Taxation
- Copy of employees’ EAD, Green Card, CW, etc.
- Business License
- Annual Corporate Report
- Sketched map of business location

Regulations of the Department of Labor require employers to keep and produce the information listed above, upon written request by the Secretary of Labor or a designee. [Regs. at NMIAC §§ 80-20.1-445 and 80–20.1-501(a-f).]

Even without a written request from the Department of Labor (“DOL” or “Department”), DOL Regulations require employers to submit Total Workforce Listings to the Department of Labor on a quarterly basis. [Regs. at NMIAC § 80–20.1-505(b-d).] The Regulations also require employers to submit an updated Workforce Plan to DOL once every 12 months, regardless of whether DOL serves a written request for it. [Regs. at NMIAC § 80–20.1-510.]

As stated, Employer was served with the Request on September 26, 2017, and instructed to produce requested documents by October 11, 2017. Employer produced no responsive documents by the due date. On October 23, 2017, investigator Jeff Camacho called Respondent’s Manager, Mr. Gani, and left a message to follow up on the Request. Mr. Gani called back and requested an extension until the end of October to produce the documents. Mr. Camacho then

¹ The Commonwealth Employment Act of 2007 notes that the Department may inspect: “The employer’s payroll records,... worker contracts, or any other documents or business records the employer is required to collect, maintain or produce for inspection pursuant to this chapter, regulations and the Minimum Wage and Hour Act.” 3 CMC § 4939(c)(3).

gave Mr. Gani a one-day extension – until October 24, 2017 – to produce the documents. The next day (10/24/17), Employer did not produce any documents to Enforcement.

On October 25, 2017, Mr. Gani came to the Enforcement Section and asked for another extension of time to produce the documents. On October 27, 2017, Mr. Gani again called Mr. Camacho at Enforcement and asked for an extension of time to produce the requested documents. At this point, the parties' recollections differ: Mr. Camacho recalls Gani saying that he could not produce documents because Ms. Sanchez was off-island; Mr. Gani recalls that he said he needed more time because he was in the midst of an ongoing investigation conducted by the U.S. Department of Labor, [Testimony of Mr. Camacho and Mr. Gani.] In any case, Mr. Camacho denied the request for an extension of time to produce documents.

As of November 17, 2017, Employer still had not produced the requested documents to Enforcement. On that day, Mr. Camacho visited a local school where Employer works, and served her by hand with the Determination. (Hearing Exhibit 1). *Id.*

Respondent Waited Until the Day of Hearing to Produce the Documents.

At the Hearing on December 18, 2017, Employer produced most of the documents that were listed in the Request. Those documents included: Total Workforce Listing, Workforce Plan, the Employer's Quarterly Withholding Tax for the last 4 quarters, Payroll records for the last 4 quarters, Tax standing from the Division of Revenue and Taxation, copies of all EADs, Green Cards, CWs, etc. of employees, a copy of the Business License as well as a sketched map of the business location. [Note: no Annual Corporate Report exists as this is a sole proprietorship.]

Several documents were missing from Employer's production of documents on the day of Hearing. These were (1) payroll withholding tax records for the 4th quarter of 2016; and (2) a one-page list of employees missing from the payroll tax records. The Hearing Officer ordered Employer to provide these documents to Enforcement within 10 days of the Hearing. On January 2, 2018, Employer produced these documents to Mr. Camacho. These have been entered into evidence as Hearing Exhibit 4(a-g).

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Employer's Reasons For Not Producing Documents Were Erroneous.

Employer testified that she relied on her Manager, Mr. Osman Gani, to address the Request. Ms. Sanchez testified that she has given Mr. Gani a Power of Attorney over her security business and relies on him to run the business. [Testimony of Ms. Sanchez.] The Hearing Officer notes that Ms. Sanchez, as the employer of record, bears the ultimate responsibility for the business operated under her name.

Manager Osman Gani testified that he had been unable to produce the requested documents because, at the time of the request (September 26 through November 17, 2017), Gani was responding to an ongoing investigation conducted by the U.S. Department of Labor. Mr. Gani stated that, at about the same time that DOL requested documents from Employer, an investigator from the U.S. Department of Labor was also asking for company documents. Gani claimed that he told, or tried to tell, Mr. Camacho on October 23, 2017, that he could not provide the documents to Enforcement until he received them back from the U.S. Department of Labor. [Testimony of Mr. Gani.]

Post-Hearing evidence, received without objection, demonstrated that Mr. Gani's proffered excuse was erroneous. The U.S. Department investigator noted that he only met with Mr. Gani twice during October and November 2017, with both meetings occurring between October 30 and November 6, 2017. Furthermore, the investigator took no original documents from Gani but only made copies of certain documents. [See Emails of 12/19/17 and 12/20/17 from Jeff Camacho to Jerry Cody, entered into evidence as Hearing Exhibit 3.²

In short, company documents remained in Employer's custody and control during the entire period of October and November 2017 and the U.S. Dept. of Labor investigation should not have hindered Mr. Gani's task of producing the documents to DOL Enforcement.

² At the Hearing, the Hearing Officer instructed Mr. Camacho to contact the U.S. Department of Labor investigator (Mr. Tamondong) Mr. Camacho was asked to gather the information and then send a written report to the Hearing Office with a copy to Respondent's counsel. Shortly after the Hearing, Mr. Camacho reported that he had contacted the investigator, Mr. Tamondong, who told him that Tamondong had met with Mr. Gani twice between October 31 and November 5, 2017; and that the investigator did not take Mr. Gani's original documents but only made copies of certain documents.

Respondent was given an opportunity to, but chose not to, contest the information given by Mr. Tamondong via Mr. Camacho. [Emails from Hearing Officer to Respondent on 12/21/2017 and 12/29/2017.] Therefore, the Hearing Officer accepts the information conveyed by Mr. Tamondong as credible and uncontested.

CONCLUSIONS OF LAW

It is uncontested that Employer was served with a Request to produce documents by Enforcement on September 26, 2017; that the Request required Employer to produce responsive documents to Enforcement by October 11, 2017; and that Employer failed to produce the documents or contact Enforcement by the due date, or even within a reasonable time thereafter. About two weeks after the due date, Employer's Manager asked for an extension of time to produce the documents, but in the end, failed to produce any documents to Enforcement by November 16, 2017 – more than a month after the original due date. On November 16, 2017, Enforcement issued its Determination and then served the document on Employer Xiao Tang Sanchez.

At Hearing, Ms. Sanchez offered no excuse for her failure to produce documents other than to note that she has signed a power of attorney which, in effect, enables Mr. Gani to manage and operate a security business under Ms. Sanchez's ownership and name. [Testimony of Ms. Sanchez.] As noted already, Ms. Sanchez, as owner of the security business, cannot avoid responsibility to provide documents to DOL by simply leaving all tasks in the hands of her agent.

Manager Osman Gani's sole excuse for failing to produce documents was that he was involved in responding to an investigation conducted by the U.S. Department of Labor. [Testimony of Mr. Gani.] However, information obtained from that U.S. Department of Labor investigator, Mr. Tamondong, reveals that the investigator only met twice with Mr. Gani and that the investigator took only copies of documents from Mr. Gani – not the documents themselves. Thus, the U.S. Department of Labor investigation did nothing to prevent or hinder Gani from responding to DOL's Request. This information demonstrates that Mr. Gani's excuse for not producing documents to Enforcement in October and November, was completely bogus.

In addition, the Hearing Officer notes that many of the documents requested by Enforcement were basic to the operation of a business, such as copies of business licenses and payroll records. Other documents, such as Total Workforce Listings and the Workforce Plan, are required to be filed periodically with DOL regardless of whether a specific document request is served. Thus, it should not have required a monumental effort on Employer's part to produce the documents. Clearly, Employer should have been more diligence in collecting and producing the documents in a timely manner.

Sanctions: Enforcement requested that Employer be sanctioned the maximum sanction of \$2,000 for failing to produce documents in a timely manner. [Determination at Hearing Exhibit 1, p. 2.] 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 [his] inherent powers ...to further the interests of justice and fairness in proceedings.” [Regs. at § 80- 50.4-820(h) and (o).]

The Hearing Officer finds that the facts here justify a substantial monetary sanction. Employer missed the deadline to produce documents by more than a month and only provided the documents after she was called to a hearing. Then, at hearing, Employer’s manager provided completely inadequate reasons to justify his delay in producing the documents. Employer’s delayed response to the Request wasted Departmental resources by requiring Enforcement to file the present case and attend a hearing to recover the documents. The DOL personnel’s time and resources were spent in a case which could have been avoided if Employer had acted responsibly and produced the requested documents in a timely manner.

Based on the above facts, the Hearing Officer concludes that Employer should be sanctioned two thousand dollars (\$2,000); however, \$1,000 of that sanction shall be suspended for two years, then extinguished, provided that Employer complies with the other terms of this Order and commits no further violations of CNMI labor laws or regulations during the next two years.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Xiao Tang Sanchez, *dba* 24/7 Security Services, for failing to produce documents as requested by Enforcement as part of a lawful administrative inspection. [3 CMC §§ 4527, 4939(a) *et seq.*; and Regs. at NMIAC §§ 80–20.1-445 and 501(a-f).] For this violation, Respondent shall be sanctioned in the manner set forth below.

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2. **Sanctions:** Respondent Xiao Tang Sanchez is hereby SANCTIONED two thousand dollars (\$2,000) for the above-described conduct; however, \$1,000 of the fine shall be SUSPENDED for a period of TWO years, then extinguished, provided that Employer complies with the terms of this Order and commits no further violations of CNMI labor law in that period. Respondent is ORDERED to pay the **\$1,000** portion of the fine 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. **Reinstatement of Suspended Sanctions:** If Respondent fails to comply with the terms of this Order, she shall be subject to possible reinstatement of the suspended fine, pursuant to a request for reinstatement filed by the Enforcement Section and after a due process hearing on this issue.

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: January 12, 2018



Jerry Cody
Hearing Officer