

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

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| In the Matter of: |) | D.C. No. 17-002 |
| Sandcastle Saipan, LLC, |) | |
| Appellant, |) | ADMINISTRATIVE ORDER |
| |) | |
| v. |) | |
| |) | |
| Department of Labor – Citizen Job Availability |) | |
| and Citizen Job Placement Section, |) | |
| Appellee. |) | |
| |) | |

This denial appeal came on for hearing on March 2, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Sandcastle Saipan, LLC, was represented by its Human Resources Manager, Kezia E. Sablan, and its Operations Manager, Ravenal Valencia. The Department’s Citizen Availability and Citizen Job Placement Section (“Job Placement”) was represented by James Ulloa. 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 appellant’s timely appeal of a Notice of Denial (“Denial”) issued by the Job Placement Section on January 31, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer’s letter of appeal, dated February 10, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Sandcastle Saipan, LLC (“Employer”) operates a magic show out of the Hyatt Regency Hotel in Garapan. The Job Placement Section denied Employer’s request for a Certification of Compliance, citing three grounds:

- (1) Employer failed to post Employer Declarations on the DOL website in 2016, in connection with a job vacancy announcement (“JVA”) for Operations Manager that was posted by Employer. Employer Rules and Regulations (“Regulations”), codified in the Northern Mariana Islands Administrative Code (“NMIAC”), at § 80-20.1-235(e). [Hearing Exhibit 1.]

(2) Employer failed to submit a Workforce Plan in 2015 and 2016 in accordance with Regulations at NMIAC § 80-20.1-510; and

(3) Employer failed to submit any quarterly Total Workforce Listing documents in 2015 and 2016, as required by the Regulations at NMIAC § 80-20.1-505(b-c).

1. Failure to Post “Employer Declarations” For 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. [Employment Rules and Regulations, codified in the Northern Mariana Islands Administrative Code (“NMIAC”) at § 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 the Denial, Job Placement charged that Employer had failed to post timely Employer Declarations in connection with a JVA that Employer posted for its Operations Manager in 2015. [Hearing Exhibit 1.]

In October 2015, Employer posted the JVA for Operations Manager on the DOL website, which ran from October 21, 2015 to November 4, 2015. Department records show that 10 online responses were posted to the website,¹ but that Employer failed to post any responses to these responders. [A printout of the JVA, listing the 10 listed responses, was entered into evidence as Hearing Ex. 3.]

At Hearing, Employer admitted that it never posted responses to any of the 10 responses posted in response to the JVA. Employer’s current Human Resources (“HR”) Manager, Ms. Kezia E. Sablan, testified that the company’s JVAs used to be posted by its former HR Manager, Gloria Sherry, until she left the company in August 2015. The HR Manager’s position remained vacant from August 2015 until October 2016, and it was during that time that this JVA was posted. It is not

¹ These names were either posted on the website by the job seeker, himself, or else submitted automatically by the Citizen Job Placement computerized system that automatically refers persons to certain JVAs, based on pre-established, programmed criteria. [Testimony of Mr. Ulloa.]

clear whether Employer ever reviewed the JVA responses in 2015. In any case, no online declarations were posted by Employer in 2015. [Testimony of Ms. Sablan.]

Recently, Employer reviewed the resumes and work history of the responders and concluded that none of these responders had the job experience required for the Operations Manager job. In February 2017, Employer logged into the DOL website and posted online responses to the ten responders. [Testimony of Ms. Sablan.]

Enforcement (Mr. Ulloa) testified that it also reviewed the resumes of each of the 10 responders and agrees with Employer that none of the responders met the job qualifications for Operations Manager. [Testimony of Mr. Ulloa.]

Based on the evidence, Enforcement requested an order sanctioning Employer for failing to post employer declarations with respect to the 10 responders who had responded to the JVA in 2015. [Regs. at NMIAC § 80-20.1-235(e).]

2. 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, the evidence shows that Employer failed to submit Workforce Plans in either 2015 or 2016. [Testimony of Mr. Ulloa.]

Employer admitted that it had not filed Workforce Plans in 2015 and 2016. Again, Ms. Sablan testified that the company had relied on the services and advice of its former HR Manager, Ms. Sherry, and that after Ms. Sherry resigned, the company failed to file the required documents. [Testimony of Ms. Sablan.] After receiving the Denial, Employer prepared Workforce Plans for 2015 and 2016. [Copies of the Workforce Plans for 2015 and 2016 were entered into evidence as Hearing Exhibits 4 and 5, respectively.]

Based on the evidence, Enforcement requested that Employer be sanctioned for failing to file Workforce Plans in 2015 and 2016. [Regs. at NMIAC § 80-20.1-510.]

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3. Failure to Submit Quarterly Total Workforce Listings for 2015 and 2016.

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 all four quarters of 2015 and 2016. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The four Listings for 2015 were entered collectively as Hearing Exhibit 7; the four Listings for 2016 were entered collectively as Hearing Exhibit 8.] Again, Employer’s current HR Manager, Ms. Sablan, noted that after the former HR Manager left the company in August 2015, the company had not realized that it was obligated to submit quarterly Total Workforce Listings. As soon as it received the Denial, it promptly took steps to correct the deficiencies.

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

DISCUSSION

The evidence established that: (1) Employer failed to post employer declarations to responders of a JVA for Operations Manager, posted in October 2015; (2) Employer failed to submit Workforce Plans for 2015 and 2016; and (3) Employer failed to submit any quarterly Total Workforce Listings in 2015 and 2016. [Regs at NMIAC §§ 80-20.1-235(e), 505(b) and 510.]

As stated above, after it received the Denial, Employer took immediate steps to correct each of the above deficiencies by submitting new documents. [See Hearing Exhibits 4-8.] As to the missing declarations, it was determined that none of the responders qualified for the job vacancy. The Total Workforce Listings showed that in 2015, Employer had 4 full-time employees: 2 U.S. citizens and 2 CW-1 employees. In 2016, the number of CW-1 status workers dropped to one, when one of the CW-1 status employees obtained federal authorization to work, then obtained permanent residency status. [Testimony of Mr. Valencia.]

Recently, Employer's only CW-1 status employee left his employment. As of the date of Hearing, Employer's full-time workforce consists of 3 employees: two U.S. citizens and one permanent resident. Employer employs no full-time CW-1 status workers at this time. [See Hearing Exhibit 6 - Workforce Plan for 2017.]

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for its numerous failures to submit census-related documentation over a two-year period. Job Placement left it to the Hearing Officer to determine the appropriate amount of sanctions.

Sanctions:

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 § 80- 50.4-820(h) and (o).

In this case, the Hearing Officer finds that a substantial fine should be assessed against this Employer, given that Employer failed to post employer declarations in 2015, and did not submit Workforce Plans and Total Workforce Listings for two full years. As mitigating factors, the Hearing Officer notes (1) that Employer promptly filed its missing documentation after it received the Denial; and (2) Employer has remained above the minimum workforce participation goal of 30% in its total, full-time workforce since 2015.² Based on the foregoing, the Employer shall be sanctioned in the amount of \$1,500; however, \$1,000 of the fine shall be suspended for two years, then extinguished, on the condition that Employer pays the remaining portion of the fine and commits no further violations of CNMI labor law during the two-year period following the issuance of the Order.

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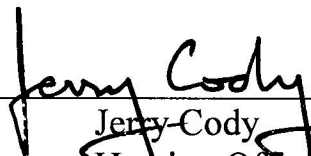
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² The minimum Workforce Participation goal of 30% (percentage of U.S. status-qualified workers in an employer's total workforce) is established in the Commonwealth by statute (3 CMC § 4525) and regulation (Regs. at NMIAC § 80-20.1-210(a)).

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Sandcastle Saipan, LLC is hereby REVERSED, provided that Appellant complies with the terms of the Order, as set forth below. The Department is instructed to issue the Certification of Compliance (i.e., Certificate of Good Standing) to Appellant as soon as the \$500 portion of the sanction has been paid.
2. **Sanctions:** For the reasons stated above, Appellant Sandcastle Saipan, LLC is hereby FINED one thousand five hundred dollars (\$1,500); however, \$1,000 of the fine shall be SUSPENDED for TWO YEARS, then extinguished, provided that Appellant pays the remaining \$500 portion of the sanction and complies with the other terms of this Order set forth below. 3 CMC §§ 4528(f)(2) and 4947(11).
3. **Payment Terms:** Appellant Sandcastle Saipan, LLC is ORDERED to pay the \$500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.
4. **Warning:** If Appellant fails to comply with its continuing obligation to comply with Department's statutes and regulations during the suspension period, it shall be subject to a possible reinstatement of the suspended sanction 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 7, 2017



Jerry Cody
Hearing Officer