

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

In the Matter of:)	D.C. No. 17-003
Bridge Capital, LLC,)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Department of Labor – Citizen Job Availability)	
and Citizen Job Placement Section,)	
Appellee.)	
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This denial appeal came on for hearing on March 13, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Bridge Capital, LLC, was represented by its counsel, Jordan Sundell. 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 February 3, 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 15, 2017, was entered into evidence as Hearing Exhibit 2.]

Appellant Bridge Capital, LLC (“Employer”) operates a lending and real estate business in Saipan. The Job Placement Section denied Employer’s request for a Certification of Compliance, citing three grounds:

- (1) Employer failed to submit the 2nd, 3rd and 4th quarterly Total Workforce Listing documents in 2015, as required by the Employer Rules and Regulations (“Regulations”), codified in the Northern Mariana Islands Administrative Code (“NMIAC”), at § 80-20.1-505(b-c); and

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

1. 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 the 2nd, 3rd and 4th quarters of 2015. After receiving the Denial, Employer prepared and submitted all of the missing Total Workforce Listings. [The three Listings for 2015 were entered collectively as Hearing Exhibit 3.] Mr. Sundell, who oversees Employer’s compliance matters, testified that Bridge Capital had not realized that it was obligated to submit Total Workforce Listings on a quarterly basis. 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.

2. Failure to Submit a Workforce Plan in 2015.

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 submitted a 2014 Workforce Plan in March 19, 2014, but then failed to update that Plan within 12 months as required by the Regulation. *Id.* [Testimony of Mr. Ulloa; Hearing Exhibit 4 – copy of 2014 Workforce Plan.] Later in 2015, months after the deadline to update, it appears that Employer submitted a Workforce Plan that did not identify a year. [Hearing Exhibit 5a – copy of Workforce Plan, signed on 10/29/15.] After receiving this Denial, Employer submitted a revised 2015 Workforce Plan, signed on February 16, 2017. [See Hearing Exhibit 5b – copy of a *revised* 2015 Workforce Plan, signed on 2/16/17.]

At Hearing, Employer admitted that it failed to submit a timely updated Workforce Plan for 2015 within 12 months of the submission of the 2014 Workforce Plan. Employer's explanation was that it was not aware until receiving 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 timely updated Workforce Plan in 2015. [Regs. at NMIAC § 80-20.1-510.]

DISCUSSION

The evidence established that: (1) Employer failed to submit three quarterly Total Workforce Listings in 2015; and (2) Employer failed to submit a timely Workforce Plan for 2015. [Regs at NMIAC §§ 80-20.1-505(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 3 and 5b.] The Total Workforce Listings showed that in 2015, Employer had 12 full-time employees, consisting of 9 U.S. citizens and 3 H1-B employees.

At Hearing, Job Placement testified that it would accept a reversal of its denial, provided that Employer is sanctioned monetarily for its failure to submit census-related documentation in 2015. 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 fine should be assessed against this Employer, given that Employer failed to submit a timely Workforce Plan for 2015 and Total Workforce Listings for three quarters in 2015. As mitigating factors, the

Hearing Officer notes that (1) Employer promptly filed its missing documentation after it received the Denial; and (2) Employer has remained well above the minimum workforce participation goal of 30% in its total, full-time workforce since 2015.¹ [Hearing Exhibit 3.] 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.

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 Bridge Capital, 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 Bridge Capital, 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 Bridge Capital, 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.

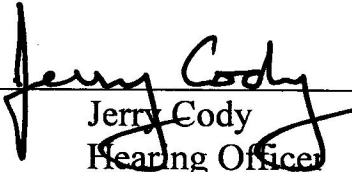
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¹ The minimum Workforce Participation goal of 30% (percentage of U.S. status-qualified workers in an employer's total workforce) is established in the Commonwealth by statute (3 CMC § 4525) and regulation (Regs. at NMIAC § 80-20.1-210(a)).

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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 30, 2017


Jerry Cody
Hearing Officer