

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DIVISION OF LABOR, DEPARTMENT OF)
LABOR AND IMMIGRATION,)
COMMONWEALTH OF THE NORTHERN,)
MARIANA ISLANDS)

Plaintiff,)

v.)

GEORGE C. DUENAS, MARGARITA)
DUENAS; ANN MARGARET DUENAS;)
RAYMOND ATTAO; COMMONWEALTH)
SECURITY SERVICES, AND DUENAS)
SECURITY SERVICES,)

Defendants.)

Civil Action No. 00-0029

AMENDED ORDER

I. PROCEDURAL BACKGROUND

This matter came before the court on July 12, 2000, in Courtroom 223A at 1:30 p.m. on the Division of Labor's motion for summary judgment. Assistant Attorney General Harold K. Pickering, Esq., appeared on behalf of the Division of Labor. Jose A. Bermudes, Esq., appeared on behalf of the Defendants. The court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision. [p. 2]

II. FACTS

On April 28, 1999, an Administrative Order was entered which found Defendants in violation of the Nonresident Workers Act for non-payment of wages and which awarded the following sums, **which include a statutory award of liquidated damages**, to the following employees:

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|--------------------------------------|---|
| (1) Shawpan Kumar Ghosh, \$2,824.90; | (10) Md. Osman, \$11,783.70; |
| (2) Shakawat, \$8,568.96; | (11) Md. Salahuddin Bhuiyan, \$15,294.56; |
| (3) Abdullah-al-Mahmud, \$38,179.42; | (12) Balai Chandra Barman, \$8,116.58; |
| (4) Md. Manirul Islam, \$21,461.16; | (13) Sree Krishna Das, \$8,482.00; |
| (5) Zakir Hossain Salim, \$9,499.64; | (14) Zahedul Islam, \$20,111.52; |

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|---------------------------------------|---------------------------------------|
| (6) Niranjana, \$9,568.02; | (15) Niranjana Karmaker, \$8,477.02; |
| (7) Masirul Hoque Mollah, \$6,373.54; | (16) Md. Nahidul Islam, \$22,796.88; |
| (8) A.B.M. Alamgir Miah, \$12,816.28; | (17) Haridas Chakraborty, \$8,375.28; |
| (9) Md. Momen Mollah, \$10,247.82; | (18) Makhan Rajbanshi, \$11,449.62. |

In addition to the above award, the Administrative Order imposed a fine of \$11,000.00 for labor law violations and permanently barred Defendants from employing nonresident workers in the Commonwealth.

On May 12, 1999, Defendants timely appealed the Administrative Order entered on April 28, 1999.

On June 11, 1999, the Administrative Order entered on April 28, 1999, was affirmed by the Secretary of Labor and Immigration. Defendants did not appeal the Secretary's decision to the Superior Court.

On January 14, 2000, the Division of Labor (Plaintiff) filed a petition to enforce the April 28, 1999, Administrative Order.

On February 4, 2000, Defendants filed an answer which admitted paragraphs 2 through 10 of the petition, while denying paragraphs 1, 11, 12, 13 and 14.

On June 16, 2000, Plaintiff filed a motion for summary judgment arguing that there are no genuine issues of material fact and that Plaintiff is entitled to judgment as a matter of law. **[p. 3]**

III. ISSUES

1. Whether the court shall grant the Division of Labor's motion for summary judgment pursuant to Com. R. Civ. P. 56.

2. Whether the court shall grant the Division of Labor's request for the imposition of civil fines in the amount of \$500.00 per day pursuant to 3 CMC § 4447(c) and the imposition of liquidated damages pursuant to 3 CMC § 4447(d).

IV. ANALYSIS

A. Motion for Summary Judgment.

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) provides:

A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Com. R. Civ. P. 56(a). Rule 56(c) continues:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Com. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. *Riley v. Public School Sys.*, 4 N.M.I. 85, 89 (1994). Also, the court will view the facts in a light most favorable to the nonmoving party. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

Here, Plaintiff has shown that no genuine issue of material fact exists due to the fact that Defendants failed to appeal the Secretary of Labor's decision, entered on June 11, 1999, which upheld the Administrative Order entered on April 28, 1999. Also, as a matter of law, a court lacks jurisdiction to hear administrative decisions not timely appealed. *See Rivera v. Guerrero*, 4 N.M.I. 79, 83 (1993). [p. 4] Thus, Plaintiff has shifted the burden to Defendants to show that an issue of material fact does exist. Defendants, however, failed to file an opposition to Plaintiff's motion for summary judgment.

Pursuant to Com. R. Civ. P. 56(e):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Com. R. Civ. P. 56(e). Here, Defendants have entered no opposition to Plaintiff's motion for summary judgment and have failed to set forth specific facts showing a genuine issue of material fact. As such, it is appropriate that summary judgment be entered against Defendants.

In addition, Defendants have failed to show that the underlying Administrative Order and subsequent affirming of such Order were obtained in violation of Defendants' right to due process. "In an administrative proceeding where a person's life, liberty, or property is at stake, Article I, § 5 of the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful notice and a meaningful opportunity to a hearing, appropriate to the nature of the case." *Office of the Attorney General v. Rivera*, 3 N.M.I. 436, 445 (1993), citing *Office of the Attorney General v. Deala*, 3 N.M.I. 110, 116 (1992), see also *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18, 32 (1976) ("A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner"). Defendants had an opportunity to appeal the April 28, 1999, Administrative Order and therefore had the opportunity to be heard at a meaningful time and in a meaningful manner at an appellate level. As such, the court finds that Defendants have not shown that any procedural or substantive due process issues exist which would preclude entry of judgment in favor of Plaintiff. As such, Plaintiff's motion for summary judgment is **GRANTED**. [p. 5]

B. Imposition of Civil Penalties.

In addition to the enforcement of the underlying Administrative Order, the Division of Labor seeks civil penalties in the amount of \$500 per day pursuant to 3 CMC § 4447(c), which states:

If any person fails to comply with any provision of this chapter, or any rule, regulation, or order issued under this chapter, or any nonresident worker employment agreement, after notice of such failure and expiration of any reasonable period allowed by the chief for corrective action, the person shall be liable for a civil penalty of not more than \$500 for each day of the continuance of such failure. Subject to the approval of the director, the chief may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing pursuant to 3 CMC § 4444.

3 CMC § 4447(c) (emphases added). Here, it is uncontroverted that Defendants have not complied with the underlying Administrative Order and have made no payments that would render them in compliance with such Order. As such, the court has the discretion to impose a penalty of \$500 per day for Defendants' failure to comply with the Administrative Order entered on June 11, 1999. The court, therefore, exercises its discretion and orders that Defendants be jointly and severally liable for

the payment of a civil fine in the amount of \$4.00 per day, such amount to be calculated from June 12, 1999, until such date as Defendants are in full compliance with the Order.

C. Imposition of Liquidated Damages.

In addition to the imposition of a civil fine, the Nonresident Workers Act mandates that the court impose liquidated damages against Defendants whenever a nonresident worker prevails in an action to recover unpaid wages and overtime compensation. Pursuant to 3 CMC § 4447(d):

In any action taken directly by or on behalf of a nonresident worker, notwithstanding any other remedies that may apply, **the worker that prevails in such action shall recover unpaid wages and overtime compensation, an additional equal amount as liquidated damages, and court costs**

3 CMC § 4447(d) (emphasis added). **As such, the sums provided herein and in the following subsection reflect and incorporate the imposition of liquidated damages. [p. 6]**

V. CONCLUSION

For the foregoing reasons, the Division of Labor's motion for summary judgment is hereby **GRANTED**. Accordingly, the court finds that Defendants are liable for payment of the following sums to the Division of Labor for future distribution to complainants:

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|---------------------------------------|---|
| (1) Shawpan Kumar Ghosh, \$2,824.90; | (10) Md. Osman, \$11,783.70; |
| (2) Shakawat, \$8,568.96; | (11) Md. Salahuddin Bhuiyan, \$15,294.56; |
| (3) Abdullah-al-Mahmud, \$38,179.42; | (12) Balai Chandra Barman, \$8,116.58; |
| (4) Md. Manirul Islam, \$21,461.16; | (13) Sree Krishna Das, \$8,482.00; |
| (5) Zakir Hossain Salim, \$9,499.64; | (14) Zahedul Islam, \$20,111.52; |
| (6) Niranjana, \$9,568.02; | (15) Niranjana Karmaker, \$8,477.02; |
| (7) Masirul Hoque Mollah, \$6,373.54; | (16) Md. Nahidul Islam, \$22,796.88; |
| (8) A.B.M. Alamgir Miah, \$12,816.28; | (17) Haridas Chakraborty, \$8,375.28; |
| (9) Md. Momen Mollah, \$10,247.82; | (18) Makhan Rajbanshi, \$11,449.62. |

In addition to the above award and in accordance with the Administrative Order entered on April 28, 1999, the court further orders the following:

(1) Defendants shall pay a fine of \$11,000.00 to the Division of Labor for labor law violations;

(2) Defendants shall be permanently barred from employing nonresident workers in the Commonwealth;

(3) Defendants shall pay a civil fine in the amount of \$4.00 per day pursuant to 3 CMC § 4447(c), such amount to be calculated from June 12, 1999, until such date as Defendants are in full compliance with the Administrative Order entered on April 28, 1999; and

(4) Defendants shall be liable for costs and attorney fees pursuant to 3 CMC § 4447(d). [p.

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So ORDERED this 11th day of August, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge