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

DIVISION OF LABOR, Department of Labor and Immigration, Commonwealth of Northern Mariana Islands, **Plaintiff,** **vs.** **AMERICAN INTERNATIONAL NEW & THRIVING GROUP CO. and its Corporate President, LEI, KE QIANG,** **Defendants.**	**Civil Action No. 00-0573B** **DECISION AND ORDER AND ENTRY OF JUDGMENT**

I. INTRODUCTION

¶1 In this proceeding, Plaintiff Division of Labor is seeking to enforce a final administrative order directing Defendants to pay wages and liquidated damages to their former employees. For the reasons set forth below, the court affirms the decision of the Secretary orders the relief requested.

II. FACTUAL BACKGROUND

¶2 At all times material hereto, Defendant American International New & Thriving Group Co. (the "Thriving Group") owned and operated the Happy House Karaoke Club and the Rose Massage Parlor. Complainants Lili Tong, Wen Ge Xu, Yan Zhang, Jing Chen, Guiying Qin, and Ying Zhao are nonresident workers employed by the karaoke club and massage parlor. The Thriving Group's club and massge parlor ceased operations on February 28, 1998. At some point thereafter, Complainants lodged wage claims against both Defendants, contending that they failed to pay wages due and owing from approximately October of 1997 through February of 1998.

¶3 In April, May, and June, the Division of Labor ("DOL") conducted an administrative hearing on Complainants' wage claims. On July 20, 2000, the Hearing Officer issued an administrative order requiring Defendants to pay each of the Complainants unpaid wages and liquidated damages.[1/] See Complaint at Ex. "A." Respondents were further sanctioned, jointly and severally, for their violations of CNMI labor laws in the collective amount of $3,000, and each of the Complainants was granted transfer relief. Defendants were personally served with a copy of the Administrative Order on July 31, 2000. *Id.*

¶4 Following an appeal, the Secretary affirmed the Administrative Order on July 20, 2000. *Id.* at Ex. "B." Defendants were served personally with a copy of the Secretary's Order on August 23, 2000. No judicial appeal of the Secretary's decision has been filed with the Superior Court

¶5 When Defendants failed to make payments as required, Plaintiff instituted this action to enforce the Administrative Order. In response to the complaint, Defendants raised two defenses: (1) the administrative hearing in this matter was held without notice and without the presence of the Defendants, and (2) DOL lacked jurisdiction to include Defendant Lei as an employer for purposes of unpaid wage claims, since he was not a party to any nonresident worker's contract. Although Defendants admitted attending the initial hearing, they claim that when they arrived for the third and final date of the hearing, they were never advised that the hearing had been continued to the afternoon of the same day. As a result, Defendants claim that the decision rendered by the Hearing Officer is null and void.

¶7 In June of 2001, Plaintiff moved for summary judgment, asserting that since Defendants failed to seek timely judicial review of the Administrative Order, the Order was final and not subject to collateral attack. Plaintiff further contended that at the preliminary hearing on May 23, 2000, all parties were specifically informed that an evidentiary hearing would take place on Saturday, June

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[1/] Specifically, the Administrative Order required Defendants to pay Lili Tong $1,095 plus liquidated damages in the same amount for a total of $3,93 1.20; $1,435.00 to Wen Ge Xu to cover unpaid wages, liquidated damages. and medical expenses; $3,417.20 to Yan Zhang to cover unpaid wages. liquidated damages, and medical expenses: $3,345.20 to Jing Chen to cover unpaid wages, liquidated damages, and medical expenses: $3.34520 to Gui Ying Qin for unpaid wages, liquidated damages and reimbursement for medical expenses; $3,345.20 to Ying Zhao for unpaid wages. liquidated damages. and medical expenses.

17, 2000 at 10:30 a.m. and that the hearing did take place on the date and at the time originally scheduled. Plaintiff contends that notwithstanding actual notice, Defendants never appeared.

¶8 Defendants do not dispute that they attended the first two hearings, that they received the Administrative Order, that they received the decision of the Secretary affirming the Administrative Order, and that the Administrative Order thus qualifies as a final order from which they never sought judicial review. Defendants do, however. dispute that they were notified of the hearing on June 17, 2000. Defendants contend that absent proof of adequate notice, the ruling is void.

II. QUESTIONS PRESENTED

¶9 Whether the Administrative Order is void for lack of adequate notice.

¶10 Whether the Administrative Order directing Defendant Lee to compensate Claimants and imposing sanctions upon him for the violation of CNMI labor laws is void or voidable for lack of jurisdiction.

¶11 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).

III. ANALYSIS

¶11 The parties do not dispute that adequate and proper notice is necessary not only for due process reasons but also to insure jurisdiction. Absent adequate and proper notice of the hearing, any order issued by the Hearing Officer would be void. *See Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 17 & n. 10 (July 13, 2001) (a judgment is void if the court that rendered it lacked jurisdiction of either the subject matter or the parties or otherwise acted in a manner inconsistent with due process of law); *Dept. of Educ. of State of California v. Bennett*, 864 F.2d 655,659 (9th Cir. 1988). See *also* 1 CMC § 9108 (in every adjudication in which a sanction may be imposed, all parties are entitled to an opportunity for a hearing upon reasonable notice); § 9109(a)(1) (persons entitled to notice of an agency hearing must be informed of the time, place and nature of the hearing).

¶12 Although Defendants claim that Lei never received notice of the final hearing, Plaintiff takes the position that Lei received actual notice of the June 17 hearing but, for whatever reason, chose to ignore it. In its Reply to Defendants' Opposition to the motion for summary judgment, Plaintiff

introduced evidence from DOL employee Rebecca Cruz who attended the May 23 hearing. Ms. Cruz testified that at this hearing, she took notes of the proceedings to record those present and the events that transpired. According to Ms. Cruz, Mr. Lei was notified of the June 17.2000 hearing date and the 10:30 a.m. time at which the hearing was scheduled at the May 23 hearing. See Declaration of Rebecca P. Cruz in Support of Reply to Opposition to Motion for Summary Judgment ("Cruz Decl.") and notes attached as Ex "3" thereto.

¶13 In addition to the notice provided at the conclusion of the May 23 hearing, Ms. Cruz testified that she asked Tony Yen, the translator for the Complainants, to contact Mr. Lei on June 16 and remind him of the hearing (Cruz Decl. at ¶5 and notes attached as Ex. "4" thereto). According to Ms. Cruz, Mr. Yen confirmed that he had reached Mr. Lei and reminded Lei of the hearing. Ms. Cruz also reported that, according to Mr. Yen, Lei stated that he would appear. *Id*.

¶14 To resolve the factual disputes, on August 9, 2001, the court held an evidentiary hearing. At the hearing, Ms. Cruz essentially repeated the testimony she gave by declaration and further confirmed that she had been present at the hearing office on Saturday morning, June 17, 2000, from 8:00 a.m. until the start of the hearing at 10:30. Although Ms. Cruz did not see Mr. Lei nor did she receive any telephone calls from him prior to the hearing, Ms. Cruz reported that Mr. Lei had been observed on the premises at 8:00 that morning, where he was noticed by several of the Complainants.

¶15 Lei did not deny arriving early for the hearing but provided no explanation for his departure. In a letter that Lei submitted to request an appeal of the Administrative Order, however, Lei admitted that he did not attend the hearing because he heard that the Chinese translator would not be present. On these facts, therefore, the court finds that Lei had adequate notice of the June 17 hearing, that Lei elected not to attend the hearing, and thus the Administrative Order is not void.

¶16 Turning next to Lei's contention that the Hearing Officer lacked jurisdiction to hold Lei personally responsible for Defendant Thriving Group's failure to pay wages and assorted contractual breaches, a party may only attack final orders in a collateral proceeding if they are absolutely void and clearly erroneous. See *Matsunaga*, 2001 MP 11 at ¶17. Only a judgment, decree or order entered by a court or administrative tribunal that lacks jurisdiction over the parties or of the subject

matter, or that lacks the inherent power to make or enter the particular order involved, is void. 2001 MP 11 at ¶ 17. Where, as here, a tribunal has the general power to adjudicate the issues in the class of suits to which the case belongs, then its interim orders and final judgment, whether right or wrong, are not subject to collateral attack. See *Matsunaga*, 2001 MP 11 at ¶17; *Jeld-Wen, Inc. v. Bartz*, 142 Or. App. 433, 436, 921 P.2d 419,420 (1996).

¶17 Once the Secretary issued his decision denying Lei's appeal and affirming the findings and conclusions of the Hearing Officer, Lei's only avenue of relief was to directly attack the rulings by seeking judicial review of the Administrative Order. Lei could have, but never did, seek judicial review of the Administrative Order. Nor did Lei seek a stay of the Order or relief from the Order pursuant to Corn. R. Civ. P. 60.[2/] As a final order, therefore, the Administrative Order remains in full force and effect.

¶18 As part of the relief requested in this enforcement proceeding, however, Plaintiff seeks statutory civil penalties payable to the Commonwealth in the amount of $500 per day from the date that Defendants were served with the written affirmation of the Administrative Order by the Secretary until the date of the entry of judgment. In the court's view, nothing in the Nonresident Worker's Act calls for this result. While the Nonresident Worker's Act certainly entitles the

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[2/] Pursuant to Corn. R. Civ. P. 60(b):

> MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD: ETC. On motion and upon such terms as are just. the court may relieve a party or his legal representative from a final judgment, order. or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise. or excusable neglect; (2) newly discovered evidence . . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) *the judgment* is *void,* (5) the judgment has been satisfied, released, or discharged . . . or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered *or* taken.... A motion under this section (b) does not affect the finality of the judgment or suspend its operation.
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> (Emphasis added).

Commonwealth to collect statutory penalties, neither their imposition nor the amount of the penalty is, as Plaintiff contends, automatic. Section 4447(c) provides:

> If any person fails to comply with any provision of this chapter, or any rule, regulation, or order issued under this chapter, . . . 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.
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> (Emphasis added).

¶18 It is uncontroverted that Defendants have failed to comply with the terms of the Administrative Order and have yet to make any payments that would render them in compliance. Pursuant to § 4444(c), therefore, the court has the discretion to award civil penalties of not more than $500 per day following notice of the failure to pay and the expiration of any reasonable period allowed for corrective action. Although Defendants have failed to address the issue of penalties, the court finds that since service of the Complaint in this action, Defendants were unmistakably placed on notice of their failure to make the payments required by the Administrative Order and thus were afforded time for corrective action. Further, the court has provided Defendants with the opportunity to explain the reasons, if any, for noncompliance. Nevertheless, the court finds a penalty of $500 per day to be excessive. See, e.g., ***Division of Labor v. Duenas***, Civil No. 00-0029 (Aug. 11, 2000) (Amended Order) (awarding statutory penalties in the amount of $4.00 per day to be calculated from the date following the issuance of the Administrative Order until the date that Defendants fully complied with the Order); ***Commonwealth*** v. ***Royal Crown*** Ins. Co., Civ. No. 99-0041 (Mar. 5, 1999) (Order and Decision) (awarding statutory civil penalties in the amount of $1.00 per day from the day that Defendant was served with the Notice of Potential Claim, to the date of compliance with the Administrative Order). The Court will not award the maximum civil penalty since, under the Administrative Order and the judgment to be rendered by this court, Claimants will receive payment

for unpaid wages and medical expenses, as well as liquidated damages; Plaintiff will receive an award of $3,000 for Defendants' failure to pay Claimants' full wages and medical expenses; and Defendants will be permanently barred from employing nonresident workers in the Commonwealth based upon their failure to pay the award of sanctions or seek relief from the award within the time provided in the Administrative Order. Based upon the facts of this case, the court determines that civil penalties in the amount of $10.00 per day are appropriate, dating from the entry of judgment in this case until all payments required by the Administrative Order are paid in full.

¶19 Based on the forgoing, judgment is hereby entered against American International New & Thriving Group Co. and its President, Lei, Ke Quiang as follows:

A. For unpaid wages, including liquidated damages and reimbursement for medical expenses, payable to the Division of Labor for future distribution to Complainants LILI TONG in the amount of $3,931.20; WEN GE XU in the amount of $1,435.20; YAN ZHANG in the amount of $3,417.20; JING CHEN in the amount of $3,345.20; GUI YING QIN in the amount of $3,345.20; and YING ZHAO in the amount of $3,345.20.

B. For pre-judgment interest on amounts payable to each Claimant at the rate of nine percent per year, dating from July 20, 1999 until the entry of judgment in this matter:

C. For civil fines, pursuant to 3 CMC § 4447(d), payable to the Commonwealth of the Northern Mariana Islands in the amount of $3,000 and for pre-judgment interest on this amount payable at the rate of nine percent per year, dating from July 20, 1999 until the entry of judgment in this matter;

D. For court costs payable to the Commonwealth of the Northern Mariana Islands pursuant to 3 CMC § 4447(d);

E. For reasonable attorney's fees incurred in enforcing the Administrative Order, pursuant to 3 CMC $4447(d), payable to the Commonwealth of the Northern Mariana Islands;

F For post-judgment interest pursuant to 7 CMC § 4101 on all amounts awarded above, payable to each Claimant and to the Commonwealth at the rate of nine percent per annum, dating

from the date judgment is entered in this action and until any and all amounts payable pursuant to this judgment are paid in full.

¶20 In addition to the above award and in accordance with the Administrative Order entered on July 20, 2000, the court further orders the following:

A. Defendants shall be permanently barred from employing nonresident workers in the Commonwealth;

C. Defendants shall pay a civil penalty to the Commonwealth of the Northern Mariana Islands in the amount of $10.00 per day pursuant to 3 CMC § 4447(c), such amount to be calculated from the entry of judgment in this matter until such date as Defendants are in full compliance with the Administrative Order entered on July 20, 2000.

So ORDERED this 29 day of November, 2001.

TIMOTHY H. BELLAS, Associate Judge Pro Tempore