

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

PACIFIC ZHIDA (ZHI DA) CO., LTD., and LIN, ZU ZIU as President and Treasurer,)	Civil Action No. 00-0433 B A.C. No. 98-065 et al.
)	
Plaintiffs/Appellants,)	
vs.)	ORDER DENYING MOTION TO DISMISS
)	
MARK ZACHARES as Secretary of Labor and Immigration, DIRECTOR OF LABOR, Guorong Chen, Jia Chen, Liwu Chen, Yushu Chen, Shunlan Fang, Zhiqiang Fang, Hongrong Guo, Fuyong Huang, Huishu Jin, Guoqing Li, Guozhang Li, Ruirong Lin, Kaiqi Lin, Liying Lin, Zufeng Lin, Xian Ji Song, Qiuping Wang, Yulin Wang, Ghohong Wu, Shuangquan Yu, Li Zhang, Kaixin Chen, Fuchun Huang, Jianhua Huang, Chengwei Xie, Yahong Jiang, Jinhong Song, Zhiming Wang, Guozhu Huang, and Qizhang Zhang,)	
)	
Defendants/Appellees.)	
<hr/>)	

I. INTRODUCTION

This matter comes before the court on the motion of Defendant/Appellee Department of Labor and Immigration (“DOLI”) to dismiss Plaintiffs’ complaint for lack of jurisdiction. DOLI contends that the complaint was not timely filed and thus the court lacks jurisdiction to proceed in this case. The court, having reviewed the record in this proceeding, including the memoranda,

FOR PUBLICATION

declarations, and exhibits, now issues its written decision denying the motion to dismiss without prejudice. [p. 2]

II. FACTUAL BACKGROUND

1. With the exception of Secretary Zachares and the Director of Labor, Defendants/Appellees [“Complainants”] are Chinese nonresident workers recruited by Plaintiff/Appellant Lin Zuxiu to travel to Saipan for work in his karaoke bar and/or “plastics fabrication” factory. Following more than nineteen days of hearings, the Hearing Officer found that Complainants had been coerced into paying exorbitant fees for processing their CNMI labor permits, only to arrive in Saipan and discover that Lin had no work for them. *See In the Matter of Director of Labor and Chen, Guorong, et al.*, A.C. No. 98-065 (Aug. 11, 2000) (Administrative Order). The Hearing Officer not only determined that Lin’s Karaoke bar had closed for business before the workers even arrived,¹ but also that the “plastics fabrication” factory never even began production because, among other things, Lin lacked an effective source of electricity.² As a result, Complainants were never given work or money by Lin. Some of

¹ The Hearing Officer determined that the Sweetheart Karaoke had ceased doing business sometime during May or June of 1997. In August of 1997, however, and with full knowledge that the Sweetheart Karaoke was no longer in business, Lin received entry permits for Complainants to work at the karaoke bar. Administrative Order at 4, ¶ 2.

² The Hearing Officer found that in March of 1997, Lin purchased a “plastics fabrication” machine from China and had it shipped to Saipan to produce styrofoam lunchboxes for sale in the CNMI and elsewhere. Administrative Order at 4, ¶ 4. After Complainants arrived in Saipan using permits for karaoke work, Lin put them to work building his factory. *Id.* at ¶ 3. In or about October of 1997, Lin notified DOLI that the karaoke business had closed and applied to change his workers’ job classifications to plastic fabricators for work at his “plastic fabrication” factory. *Id.* At this time, however, Lin had no generator and was dependent upon power supplied by CUC. *Id.* at 7. The

them attempted to make ends meet by assisting Lin with an unauthorized bean sprout business that Lin started by growing sprouts on the floor of his dormitory. In the end, the Hearing Officer found that Complainants received no wages for this work. After nearly a year without work or salary, they filed labor cases against Lin and Plaintiff/Appellant Pacific Zhida Co., Ltd.

2. On August 11, 2000 DOLI issued an administrative order finding, in material part, that certain processing fees collected by Lin in China amounted to illegal payments in violation of CNMI labor law and that Pacific Zhida Co., Ltd. was the “alter ego” of Lin. *See* Administrative Order at 13- [p. 3] 16.³ The Hearing Officer also found Lin’s claim – that he paid his workers’ salaries as reflected on company payroll records – to be false.⁴ Contrary to the allegations of Plaintiffs, the Hearing Officer also determined that Complainants had not abandoned their jobs or resigned voluntarily. Following a finding that Lin had essentially stranded Complainants in Saipan without work, the Hearing Officer awarded Complainants liquidated damages in the amount of \$181,993.82, reimbursement for processing fees, as well as medical and insurance expenses. As a sanction for the labor law violations, the Hearing

Hearing Officer found, however, that the machines were never hooked up to a power source and thus did not operate. *Id.*

³ The Hearing Officer concluded that the corporate veil of Pacific Zhida Company should be pierced and personal liability imposed on its dominant shareholder and president, Lin Zuxiu, because, among other things: (1) the corporation was undercapitalized, (2) the corporation never issued any dividends, (3) no profit was ever realized on the corporate books, (4) Lin commingled his own personal finances with the corporate records and paid for his personal expenses out of corporate proceeds; (5) Lin exercised complete control over the company; (6) there were serious deficiencies in banking records as well as legitimate payroll and time records; (7) corporate records, to the extent that they existed, were largely meaningless; and (8) Lin used the corporate form to promote fraud.

⁴ The Hearing Officer determined that Lin’s claim, “that he paid his workers’ salaries in accordance with the payroll sheets, to be false.” Administrative Order at ¶ 24. The Hearing Officer found that Plaintiffs/Appellants payroll sheets falsely reported the number of hours worked and the wages paid. *Id.* at ¶ 25.

Officer also ordered Plaintiffs/ Appellants to pay an additional \$8,000 to Complainants and disqualified Plaintiffs/Appellants from employing or using nonresident workers in the CNMI.

3. On October 4, 2000, Plaintiffs filed their complaint for judicial review of the Administrative Order, asserting that: (1) the Hearing Officer's findings were clearly erroneous and not supported by substantial evidence; (2) DOLI lacked jurisdiction over acts committed in China; (3) the Hearing Officer erred in finding that Appellant Zu Xiu Lin was the Alter ego of Pacific Zhida Co., Ltd.; and (4) the Hearing Officer erroneously failed to consider mitigation of damages. Complaint at ¶ 5. Plaintiffs further maintained that a number of claims should have been barred by applicable statutes of limitation. *Id.* In their complaint, Plaintiffs ask this court to reverse the decision of the Secretary, affirming the decision of the Hearing Officer. Defendants have moved to dismiss the complaint, on grounds it is untimely.
4. There is no dispute that on August 15, 2000, the Administrative Order was served on Complainants and their counsel, Antonio Atalig. There is also no question that, following a timely [p. 4] appeal by Plaintiffs, the Secretary issued a final order denying the appeal dated September 18, 2000 ("the Final Order"). The parties further agree: (1) that on September 20, 2000, the Final Order was served on attorney Atalig as well as Appellant Lin; (2) that Appellants filed their complaint for judicial review of the Final Order in this court on October 4, 2000; and (3) that the statutory provisions governing this action are set forth in 3 CMC § 4446, which requires a request for judicial review to be initiated within fifteen (15) days of the final action.⁵ Because the Final Order bears a signature date of September

⁵ 3 CMC § 4446 provides, in material part, that judicial review "of a final action of the Director is authorized after exhaustion of administrative remedies and must be initiated within 15 days of the final action." 3 CMC § 4446 also provides: "Except as may be contrary to the provisions of this chapter, judicial review shall be pursuant to 1 CMC §

18, however, DOLI argues that the complaint filed on October 4 is untimely and should be dismissed.

5. In response, Plaintiffs contend that the date of execution does not determine the date of issuance. Although Plaintiffs agree that the deadline for appeal runs from the issuance of the Secretary's decision, they maintain they are unable to determine this date, as the Final Order contains no stamp indicating when it was issued or filed. Plaintiffs point to the Commonwealth Supreme Court's decision in *Pacific Saipan Technical Contractors v. Rahman*, Appeal No. 99-008 (Oct. 17, 2000), in which the Court ruled that the date triggering the period for filing an appeal under 3 CMC § 4446 is the date when the administrative decision issues or "the date that the decision is entered or filed by DOLI." Slip Op. at 7. Plaintiffs emphasize, moreover, that in *Rahman*, the Court noted that "[t]he date that the decision was signed is not necessarily the date that it was issued." Slip Op. at 9.

III. QUESTION PRESENTED

Whether Plaintiffs/Appellants' appeal of the Hearing Officer's August 15, 2000, the Administrative Order was timely filed.

IV. ANALYSIS

1. Contrary to the Commonwealth's Administrative Procedure Act, which provides for a thirty day period to review the actions of administrative agencies, review of final orders issued under the [p. 5] Nonresident Workers Act, must be initiated within fifteen days of final agency action. *Compare* 1 CMC § 9112(b) *with* 3 CMC § 4446. Thus, this court lacks jurisdiction to review administrative decisions under the Nonresident Workers Act that are

not appealed within fifteen days of issuance. *Rahman*, Slip Op. at 5. Absent a date stamp indicating the date upon which the decision was filed or entered, Plaintiffs contend that the date of issuance should, consistent with DOLI regulations, correspond to the date that they were served with the Final Order.⁶ This argument, however, was squarely rejected by the Commonwealth's Supreme Court in *Rahman*. See *Rahman*, Slip Op. at 7-8.

2. In ruling that the date of issuance of a final order means the date that the order was filed or entered, the *Rahman* Court emphasized the absence of any statutory reference conditioning the right to an appeal upon receipt of notice. Slip Op. at 7-8. In its ruling, the Court also relied on general principles of administrative law recognizing that the "issuance" of an administrative order means the date of entry or filing, and not the date of service or mailing. *Id.* at 7. Notwithstanding the due process concerns that, in Plaintiffs' view, threaten to deprive unrepresented complainants of their right to appeal absent evidence of timely notice, the *Rahman* Court concluded that the issuance of a decision could not be construed to mean receipt of the decision. Slip Op. at 8. Accordingly, the Court rejected the argument advanced by Plaintiffs and held that an appeal to the Superior Court must be initiated within fifteen days after the date of issuance of the Secretary's decision, not fifteen days after receipt of the decision. *Id.*
3. When considering a motion to dismiss, the court must accept the allegations in the complaint as true and construe them in a light most favorable to the plaintiff. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 272 (283 (1990)). Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would

⁶ See Alien Labor Rules of Practice and Procedure, 16 Com. Reg. 12400 (Sept. 15, 1994) at Rule 6(a) and (b) (defining issuance of notice of warning and notice of violation).

entitle him to relief. *Id.* Although the Final Order contains a typewritten date indicating when the decision was supposedly signed, there is no concrete evidence establishing the date of the decision's issuance. Since [p. 6] Plaintiffs could conceivably prove a set of facts establishing that the decision was filed or entered later than the date when it was supposedly signed, this court cannot rule as a matter of law that the filing of the Request for Judicial Review was untimely.

4. Had DOLI heeded the suggestions of the *Rahman* Court,⁷ it would have put into place the routine use of a date stamp, and the problem presented in this case could have been avoided. Failing this, DOLI could have submitted an affidavit from the Secretary conclusively establishing that he executed his decision on the typewritten date and that the decision was entered or filed on the date of execution. Alternatively, DOLI could have proffered evidence establishing when the decision was actually issued. DOLI's failure to introduce any concrete evidence establishing the date of issuance leaves the court with no choice but to deny the motion.

ORDER

On the basis of the foregoing, the motion to dismiss Plaintiffs/Appellants' Request for Judicial Review is DENIED.

So ORDERED this 23 day of January, 2001.

/s/

TIMOTHY H. BELLAS, Associate Judge

⁷ See Slip Op. at 9, note 3.