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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

February 7, 1996

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) OCAHO Case No. 95A00081
GIAMBLIS ENTERPRISES, INC.,)
T/A CAMP HILL DINER,)
Respondent.)
_____)

DECISION AND ORDER

Appearances: Kent Frederick, Esquire, Immigration and Naturalization Service, United States Department of Justice, Philadelphia, Pennsylvania, for complainant;
John Manos, Esquire, Philadelphia, Pennsylvania, for respondent.

Before: Administrative Law Judge Joseph E. McGuire

Procedural History

On May 10, 1995, complainant, acting by and through the Immigration and Naturalization Service (INS), filed a four (4)-count Complaint charging Giambli Enterprises, Inc., (respondent) with 19 violations of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §1324a, for which civil penalties totaling \$8,250 were assessed.

In Count I, complainant charged that after November 6, 1986, respondent knowingly hired and/or continued to employ one Felix Torres-Quiros, knowing that he was an alien not authorized for employment in the United States, in violation of IRCA, 8 U.S.C.

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§1324a(a)(1)(A). In the alternate, complainant contended that after November 6, 1986, respondent, having previously hired Torres-Quiros for employment, continued to employ him even though respondent knew that he was, or had become, unauthorized with respect to such employment, in violation of IRCA, 8 U.S.C. §1324a(a)(2) and 8 C.F.R. §274a.3. Complainant levied a civil money penalty of \$1,050 for that single violation.

In Count II, complainant alleged that after November 6, 1986, also, respondent had employed the two (2) individuals named therein for employment in the United States, and that respondent had failed to prepare and/or make available for inspection Employment Eligibility Verification Forms (Forms I-9) for those two (2) individuals, in violation of 8 U.S.C. §1324a(a)(1)(B). Complainant imposed civil money penalties of \$800 for that count, or \$400 for each violation.

Complainant alleged in Count III that after November 6, 1986, respondent had hired the 15 individuals named in paragraph A for employment in the United States, and had failed to complete properly Section 2 of their Forms I-9, in violation of IRCA, 8 U.S.C. §1324a(a)(1)(B). Complainant assessed a civil money penalty of \$400 for each of those infractions, or a total levy of \$6,000 on that count.

In Count IV, complainant charged that respondent had failed to ensure that the single employee listed therein had properly completed Section 1 of his Form I-9, thus violating 8 U.S.C. §1324a(a)(1)(B). Complainant levied a civil money penalty of \$400 for that infraction.

On November 7, complainant filed a pleading captioned Addendum to Complainant's Memorandum in Support of Motion for Summary Decision. In that motion, complainant argued that not only was it proper that it be granted a summary decision on all alleged facts of violation at issue, but that it was also appropriate to find that by having failed to respond to discovery requests, coupled with the undersigned's imposition of sanctions for that failure, respondent has waived its right to contest the civil penalty sums assessed for the 18 paperwork violations in Counts II, III, and IV.

On November 9, 1995, the undersigned issued an Order Granting Complainant's Motion for Summary Decision. In that Order, which also set forth the procedural history of this proceeding, com-

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plainant's motion for summary decision was granted as to the facts of violation alleged in the 19-violation, four (4)-count Complaint, leaving at issue only the appropriate civil money penalties to be assessed for those violations. Towards that end, the parties were instructed in that Order to submit concurrent written briefs addressing the appropriate civil penalty sums to be assessed for those 19 violations and to have done so by November 15, 1995.

In imposing civil money penalties in cases involving allegations of an illegal hire/continuing to employ violation, IRCA provides not only for the imposition of tiered civil money penalties, in amounts depending upon whether the person cited has prior violations of this type, but also for the issuance of a cease and desist order:

[w]ith respect to a violation of subsection (a)(1)(A) or (a)(2) of this section, the order under this subsection —

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of —

- (i) not less than \$250 and not more than \$2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,
- (ii) not less than \$2,000 and not more than \$5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or
- (iii) not less than \$3,000 and not more than \$10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity —

- (i) to comply with the requirements of subsection (b) . . . with respect to individuals hired . . . during a period of up to three years, and
- (ii) to take such other remedial action as is appropriate.

8 U.S.C. §1324a(e)(4).

Because complainant has not demonstrated that respondent has previously been subject to an order under this provision of IRCA, the appropriate civil penalty range for the single illegal hire/continue to employ violation contained in Count I is an assessment of not less than \$250 and not more than \$2,000.

In having assessed a \$1,050 civil money penalty assessment for the knowingly hire/continue to employ violation in Count I, complainant did not act unreasonably nor did it abuse its discretion in assessing an \$800 sum in excess of the \$250 statutory minimum

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amount for an infraction of that type. Accordingly, the \$1,050 civil money penalty assessment in Count I is affirmed.

The remaining 18 violations in Counts II, III, and IV involve employment verification system, or paperwork, infractions in violation of the provisions of 8 U.S.C. §1324a(b). For violations of that type, civil money penalties of not less than \$100 and not more than \$1,000 must be imposed for each violation. 8 U.S.C. §1324a(e)(5).

It can be seen then that in having cited respondent for those 18 violations, the minimum total assessment sum which complainant was required to levy was \$1,800 and the maximum sum was \$18,000. The assessment parameters, unlike those for knowingly hire/continue to employ violations, do not increase because of the cited party's history of prior violations of that type.

However, in arriving at appropriate civil money penalties for paperwork violations, due consideration must be given to: (1) the size of the business of the employer being charged, (2) the good faith of the employer, (3) the seriousness of the violation, (4) whether or not the individual was an unauthorized alien, and (5) the history of prior violations. 8 U.S.C. §1324a(e)(5).

Given that background, it is found that complainant's total civil money penalty assessment of \$7,200 for those 18 paperwork violations, or an average of \$400 for each infraction, reflects that complainant gave due consideration to the preceding statutory criteria. Further, complainant did not act unreasonably or arbitrarily in having levied those assessments which are some \$300 in excess of the statutorily mandated \$100 minimum amounts for each of those 18 infractions.

Accordingly, the imposition of \$400 civil money penalty assessments for each of the 18 paperwork violations contained in Counts II, III, and IV, for a total of \$7,200 for those 18 infractions, is also being affirmed.

In summary, it is found that respondent violated the provisions of 8 U.S.C. §1324a(a)(1)(A) in the manner alleged in Count I of the Complaint and that the complainant correctly levied a \$1,050 civil money penalty for that infraction.

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It is further found that respondent also violated the employment verification system, or paperwork, provisions found at 8 U.S.C. §1324a(b), as alleged in Counts II, III, and IV of the Complaint and that complainant properly assessed civil money penalties totaling \$7,200, or \$400 for each of the 18 paperwork violations.

In addition, respondent is hereby ordered to cease and desist from further violations of IRCA, 8 U.S.C. §§1324a(a)(1)(A); 1324a(a)(2).

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This Decision and Order shall become the final order of the Attorney General unless, within 30 days from the date of this Decision and Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§1324a(e)(7)–(8) and 28 C.F.R. §68.53 (1995).