

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

UNITED STATES OF AMERICA,	)
Complainant,	)
	)
v.	) 8 U.S.C. §1324a Proceeding
	) CASE NO. 92A00127
ANDERS KAMPE, d.b.a	)
KAMPE MOTORS, LTD.,	)
Respondent.	)
_____	)

ORDER REGARDING CIVIL MONEY PENALTY

I. History of the Case

On September 11, 1992, I issued a Final Order in which I set out the procedural history of this case and granted Complainant's Motion for Default concerning only Respondent's liability. The Order was based on Respondent's nonfiling of an Answer and, thus, its waiver of its right to appear and contest the allegations in the Complaint filed on June 5, 1992. 28 C.F.R. 68.9(b)<sup>1</sup>. Additionally, I held that the amount of civil penalties to be assessed would be determined after Complainant's submission of a statement regarding the application of the factors enumerated in 28 C.F.R. 68.52(c)(iv) to this case. Respondent was also granted the right to submit such a statement if it wished. See U.S. v. Carlos Cruz d.b.a. La Rosa Bakery aka La Rosa Bakery and Restaurant, OCAHO Case No. 92A00052 (9/11/92).

Complainant has timely filed its statement regarding the factors set out in 28 C.F.R. 68.52(c)(iv); Respondent has not. At this time, determination of the amount of civil penalties is appropriate.

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<sup>1</sup> Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings as amended in the Interim Rule published in 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. Section 68).

II. Civil Penalties

Section 274A(e)(5) of the Immigration and Nationality Act (Act), which corresponds to 28 C.F.R. 68.52(c)(iv), states:

With respect to a violation of section 274A(a)(1)(B) of the INA, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien and the history of previous violation.

The regulations, and the statute, do not state that consideration of these factors applies to a determination of civil penalties for violations of Section 274A(a)(1)(A) or Section 274A(a)(2) under the Act. 28 C.F.R. 68.52; 8 U.S.C. 1324a(a)(1)(A); (a)(2). I note that neither the regulations nor the statute state that they do not. Id. However, I normally consider these factors as they give me some appreciation of Respondent's business conditions which are usually not before me in a default situation.

A. Factors

1. Size of the Business of the Employer being Charged

Complainant asserts that, at the time of inspection, Respondent employed between five (5) and ten (10) individuals and that its gross profits, as represented by its owner, amount to between twenty and thirty thousand dollars (\$20,000-30,000) a year. Respondent has not submitted any counter argument regarding this factor.

Based on Complainant's representations, I find that Respondent's business is small. See e.g., U.S. v. Huang, 1 OCAHO 300 (2/25/91). As such, I find that Respondent is entitled to mitigation in Counts I and II based on this factor.

2. Good Faith of the Employer

As to Count I, Complainant states that Respondent was given both an educational visit relating to the preparation and relevant law regarding the Forms I-9, and a Notice of Inspection, on January 6, 1992. Complainant states further that on January 14, 1992, when an inspection was conducted, no Forms I-9 had been prepared. On

January 24, 1992, when Complainant again returned for inspection, Respondent produced improperly completed forms for only the current employees. Respondent allegedly stated that he could not complete I-9's for the individuals named in Count II since he did not have any paperwork for them.

As to Count II, Complainant states that these individuals admitted in a sworn statement that Respondent was aware that they were unauthorized to work and that they had been recruited through Respondent's advertisement in a Swedish newspaper in Sweden. Complainant further states that Respondent did not request any documentation from these individuals when they were hired, rented them rooms in his home and withheld the rent from their pay, and paid them in cash with no other deductions taken from their salary. In addition, Complainant stated that Respondent instructed the individuals named in Count II to hide from Complainant when it came for inspection. Respondent has made no counter argument with regard to this factor.

Based on Complainant's assertion of the facts, I find that Respondent did not exhibit good faith and is not entitled to mitigation based on this factor.

### 3. Seriousness of the Violation

Complainant argues that, for Counts I and II, both the knowing employment of an unauthorized individual and the failure to prepare an I-9 Form for this individual are serious violations of the Act. Complainant also points out that Respondent did not complete the Forms I-9 until after Complainant's second visit. Respondent has made no counter argument regarding this factor.

I find that, based on the totality of the record, these are serious violations. Therefore, I find that Respondent is not entitled to mitigation in Counts I or II based on this factor.

### 4. Whether or Not the Individual was an Unauthorized Alien

Complainant argues that Respondent employed two unauthorized aliens at time of the employer survey but cannot establish whether eight (8) other individuals were authorized or not. Respondent has made no counter argument regarding this factor.

I will follow my reasoning in U.S. v. Camidor Properties, 1 OCAHO 299 (2/25/91) and mitigate the civil penalty amount in the violations not involving the illegal aliens, i.e. Count I, but not mitigate in the violations involving the illegal alien in Counts II.

5. History of Previous Violations of the Employer

Complainant states that there were no prior violations by this employer. Respondent has made no counter argument on this factor. However, I will mitigate the civil penalty in Counts I and II based on this factor.

B. Amount of Civil Penalty

Complainant has requested that I assess a total civil penalty in this case of six thousand six hundred dollars (\$6,600) which reflects a civil penalty of three hundred dollars (\$300) for each of the twelve violations in Count I and one thousand five hundred dollars (\$1,500) for each of the two violations in Count II. After a review of the record, my findings and Complainant's arguments, I find that, using a judgmental approach, the amount requested by Complainant for civil penalties is reasonable and appropriate. As such, the total civil penalty for the violations of Count I and II will be assessed at six thousand six hundred dollars (\$6,600). The civil penalty amount is due and payable to Complainant on or before thirty (30) days from the date of this Order.

Under 28 C.F.R. 68.53(a) a party may file, with the Chief Administrative Hearing Officer, a written request for review of this Decision and Order together with supporting arguments. Within thirty (30) days of the date of the Administrative Law Judge's Decision and Order, the Chief Administrative Hearing Officer may issue an Order which modifies or vacates this Decision and Order.

**IT IS SO ORDERED** this 9th day of October, 1992, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge