

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. 92A00280
ADOLFO MARTINEZ JR.,	)	
INDIVIDUALLY d/b/a	)	
AAAA ROOFING,	)	
Respondent.	)	
_____	)	

FINAL DECISION AND ORDER  
(March 9, 1993)

Appearances:

Lee Abbott, Esq., for Complainant  
Adolfo Martinez, Jr., pro se

I. Procedural Background

On December 19, 1991, Complainant (INS) issued a notice of intent to fine (NIF) Respondent (Martinez) \$3640.00. Complainant alleged that Martinez failed to perfect employment eligibility verification paperwork (Forms I-9), as required pursuant to section 101 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. §1324a. On December 23, 1991, INS served the NIF. By letter dated January 10, 1992, in accordance with procedural requirements, Respondent (Martinez) addressed his request for hearing to INS. Almost a year later, on December 17, 1992, INS filed a complaint alleging the violations previously set out in the NIF.

The complaint contains four counts. Each count implicates employment of individuals listed in that count after November 6, 1986, the effective date of IRCA.

Count 1, failure to ensure that six individuals properly completed section 1 of Forms I-9;

Count 2, failure to properly complete section 2 of Forms I-9 for two individuals;  
Count 3, failure to ensure proper completion of section 1 and failure to properly complete section 2 of Forms I-9, for three individuals;  
Count 4, failure to ensure proper completion of section 1 and failure to complete section 2 of the Form I-9 within three business days of hire, as to one individual; and,  
Count 5, failure to have one employee complete section 1 of the Form I-9 at the time of hire and failure to complete section 2 of that I-9 within three business days of hire.

Each violation was assessed at \$280.00.

On December 22, 1992, this Office (OCAHO) issued its notice of hearing and transmitted a copy of the complaint to Martinez. The postal receipt confirms receipt by him on December 28, 1992. On January 7, 1993, Respondent filed a letter dated January 4, 1993. I accepted this letter-pleading as an answer to the complaint. Because Respondent's letter failed to indicate service on INS, I issued a January 7 order which transmitted a copy of the answer to INS.

On January 15, 1993, Complainant filed a motion to strike Respondent's letter-pleading. Complainant asserted that the answer was deficient under 28 C.F.R. §68.9. Respondent failed to address the allegations of the complaint with particularity. However, Complainant, in effect, stated that it understood Respondent's filing to have admitted liability while taking issue with the amount of penalty assessed.

By order dated January 25, 1993, I denied Complainant's motion to strike the answer to the complaint. Instead, I held that,

Although the pleading filed by Respondent is not crystal clear, I deem it sufficient. In ruling on Complainant's motion, I state my understanding that the Answer does not contest liability for the paperwork violations alleged. I understand the Answer to take issue only with respect to the amount of the civil money penalty assessed.

The order provided as follows:

Respondent should file an Amended Answer with this Office not later than February 4, 1993. In this filing, Respondent should indicate whether it intends to:

(1) contest liability and the civil money penalty or

(2) the civil money penalty exclusively.

The order directed Respondent to specifically state the basis for denial of the allegation of each count in the complaint if he intended to challenge liability. I further directed that

If Respondent's filing shows that only the penalty is at issue, Complainant will be expected to file a statement which provides a prima facie basis for considering the five statutory factors essential to a civil money penalty adjudication

## II. Discussion

### A. Liability Found

On February 16, 1993, Martinez filed a letter dated February 9 which unequivocally states that "I am contesting the civil money penalty exclusively." He went on to describe financial difficulties, but good naturedly stated that as the result of a fine he "will tell others in business to be more alert;" he "will look at this as a costly experience and will make the best of it." Accordingly, I find and conclude that there is no contest as to liability and that Respondent committed the paperwork violations alleged in the complaint.

### B. Civil Money Penalty Adjudged

The January 25 order contemplated discussion by INS of the five factors required to be considered in assessing civil money penalties for paperwork violations in the event Martinez contested only the penalty. 8 U.S.C. § 1324a(e)(5). The five factors are, size of the business; good faith of the employer; history of previous violations; involvement of unauthorized aliens; and seriousness of the violations.

On February 25, 1993, Complainant filed its statement on the penalty, dated February 17. The statement had been erroneously mailed to me at OCAHO's San Diego address. The statement is a thorough discussion of its original \$3640.00 assessment, reducing that sum to \$1480.00. With the exception of a single charge in count 3 (as to Jesus Contreras), INS now proposes an assessment at the statutory minimum for each of the other 12 charges in the five counts. To support the reduction, INS relies in each instance on the analysis in U.S. v. Honeybake Farms, Inc., 2 OCAHO 311 (4/2/91).

Size of employer's business

I agree with INS that the Respondent business was a small enterprise. INS describes Respondent's activity as an unincorporated construction business, which employed 10 to 15 individuals at any one time. Personnel turn-over was high. It appears from Respondent's January 4, 1992 and February 9, 1992 letter-pleadings that he is no longer in business for himself but is presently on salary.

Employer's good faith

I agree with INS that Respondent appears to have made a good faith effort to comply with IRCA requirements. INS does not claim that Martinez failed to prepare or present Forms I-9. Martinez is charged, without contest, with having failed to properly complete the I-9s and with failing to ensure that employees properly completed them.

History of previous violations

I accept the statement by INS that Respondent has no history of previous violations.

Whether employees are unauthorized

I accept the statement by INS that none of the individuals named in the complaint are unauthorized as to that employment.

Seriousness of the violations

I accept the reductions in penalty as to the twelve employees for whom INS has proposed reducing the penalty on the basis that, as found in Honeybake Farms, the specific deficiencies are not necessarily serious for purposes of civil money penalty assessment. As to the thirteenth, I accept as uncontroverted, and as serious, Complainant's description. INS suggests gross inattention by Martinez to the filling out of section 1 of the I-9 for Jesus Contreras. The employer's failure to assure that the documents tendered were those of the putative employee is also serious, omission of a date less so.

On balance, having considered the five factors as discussed by INS, taking into account the financial posture of Martinez, I adjudge the statutory minimum of \$100 for each of the thirteen violations as a sufficient civil money penalty.

III. Ultimate Findings, Conclusions and Order

I have considered the pleadings and arguments submitted by the parties. All motions and requests not previously disposed of are denied. In addition to the findings and conclusions already mentioned, I make the following determinations, findings of fact and conclusions of law:

1. That Respondent violated 8 U.S.C. §1324a(a)(1)(B) by failing, as alleged in the complaint, to comply with the requirements of 8 U.S.C. §1324a(b)(1) and (2) with respect to the individuals named in counts 1 through 5 of the complaint.

2. That upon consideration of the statutory criteria for determining the amount of the penalty for violation of 8 U.S.C. §1324a(a)(1)(B), it is just and reasonable to require Respondent to make payment in the sum of \$100.00 as to each individual named in the complaint, i.e., for thirteen named individuals an aggregate payment of \$1300.00.

3. That the minimum civil money penalty authorized by law having been adjudged for the uncontested violations found, the hearing previously scheduled is canceled.

4. This decision and order is the final action of the judge in accordance with 8 U.S.C. §§1324a(e)(7), (8) and 28 C.F.R. §68.52(c)(iv) [1991]. As provided at 28 C.F.R. §68.53(a)(2), this action shall become the final action of the Attorney General unless, within thirty 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 parties adversely affected. See 8 U.S.C. §§1324a(e)(7), (8); 28 C.F.R. §68.53.

**SO ORDERED.**

Dated and entered this 9th day of March, 1993.

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MARVIN H. MORSE  
Administrative Law Judge