

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. 93A00089  
MINACO FASHIONS, INC. )  
Respondent. )  
\_\_\_\_\_ )

ORDER ADJUDGING LIABILITY, INCORPORATING  
SECOND PREHEARING CONFERENCE REPORT  
(August 19, 1993)

MARVIN H. MORSE, Administrative Law Judge

Appearances:  
William F. Jankun, Esq., for Complainant.  
Lawrence M. Wilens, Esq., for Respondent.

I. Procedural Background

As confirmed by order dated July 19, 1993, the first telephonic prehearing conference scheduled a second conference for August 13, 1993. On August 13, counsel for Respondent (Minaco) on its behalf acknowledged liability as alleged. Counsel's request that the conference adjourn was granted. He expressed the need to consult with his client as to putting the government to its proof on the civil money penalty assessment.

As agreed, the second conference resumed August 18, 1993. Minaco, by counsel, requested that the quantum of the civil money penalty be made the subject of a confrontational evidentiary hearing. The following schedule was adopted:

A status conference on Tuesday, October 5, 1993, at 9:00 a.m., EDT. See 28 C.F.R. §§68.12 and 13. The parties will be expected to jointly

explore maximum utilization of fact stipulations and exchange witness and exhibit lists prior to the conference.

Evidentiary hearing, Tuesday, November 2, 1993, at a time and place in New York City to be further identified.

## II. Discussion

### A. Liability Adjudged

By extensive documentation transmitted under date of July 15, 1993, copies of which were filed with the judge on July 16, Minaco responded to Complainant's discovery requests. Minaco having acknowledged liability, this order finds and concludes in favor of Complainant and against Minaco with respect to all the violations alleged in the complaint, as more particularly described infra, at III. Subsequent to this order, the only issue to be resolved is the quantum of civil money penalty.

### B. Opportunity for Hearing on Civil Money Penalty

An employer served with a notice of intent to fine who timely requests a hearing is entitled to a hearing on the record pursuant to 5 U.S.C. §554, the adjudication provision of the Administrative Procedure Act. 8 U.S.C. §1324a(e)(3)(B). Minaco made a timely request.

In a §1324a case, absent agreement or clear notice that quantum is at issue on a dispositive motion, e.g., a motion for summary decision pursuant to 28 C.F.R. §68.38, the employer is entitled to a 5 U.S.C. §554 confrontational evidentiary hearing on the record. Accordingly, although the more common practice where liability is established is to resolve civil money penalty issues on a paper record, this order confirms that Minaco shall have its confrontational evidentiary hearing. See Martinez v. I.N.S., No. 91-4792 (5th Cir. 1992) (remanding U.S. v. Martinez, 2 OCAHO 360 (8/1/91)). (ALJ erred by summary judgment imposition of penalties where reviewing court concluded that the ALJ had not given sufficient notice that he contemplated summary judgment as to penalties as well as liability).

III. Ultimate Findings, Conclusions and Order

In addition to the findings and conclusions already mentioned, I make the following determinations, findings of fact and conclusions of law:

1. That Minaco employed in the United States after November 6, 1986 the twenty-nine (29) individuals identified in Count I of the complaint without preparing and/or presenting employment verification forms (Forms I-9) for them, in violation of 8 U.S.C. §1324a(a)(1)(B) as more particularly described in that count.

2. That Respondent employed in the United States after November 6, 1986 the thirty-one (31) individuals identified in Count II of the complaint without properly completing section 2 of the employment verification forms (Form I-9) for them, and without ensuring that those 31 individuals properly completed section 1 of the Form I-9, in violation of 8 U.S.C. §§1324a(b)(1) and (2) as more particularly described in that count.

3. That Respondent employed in the United States after November 6, 1986 the seventeen (17) individuals identified in Count III of the complaint without properly completing section 2 of the employment verification forms (Form I-9) for them, in violation of 8 U.S.C. §§1324a(b)(1) as more particularly described in that count.

4. That Respondent's liability to pay the civil money penalties assessed will be determined after opportunity for an evidentiary hearing, provided, however, that as a matter of law the minimum penalty cannot be less than \$7,700.00, calculated as 77 paperwork violations set forth in the complaint at a statutory minimum of \$100.00 each.

**SO ORDERED.**

Dated and entered this 19th day of August, 1993.

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MARVIN H. MORSE  
Administrative Law Judge