

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 August 2007

Case No.: 2007MSP00008

In the Matter of

**RONALD SCHUTTE, An Individual, d/b/a
SUPERIOR AVOCADO PICKING CO.,**

Respondent.

DECISION AND ORDER
GRANTING SUMMARY DECISION

This proceeding arises under the Migrant and Seasonal Agricultural Worker Protection Act ("Act"), 29 U.S.C. § 1801, *et. seq.*, and the regulations enacted thereunder at 29 C.F.R. Part 500. The Act provides employment-related protections to migrant and seasonal agricultural workers and is administered and enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration.

On July 31, 2006, the Plaintiff assessed a civil money penalty of \$1,700.00 against the Respondent Ronald Schutte, doing business as Superior Avocado Picking Company, for a total of nine violations of the Act. On August 4, 2006, the Respondent filed a timely exception to the DOL's determination. On June 26, 2007, this Office received an Order of Reference which noted that the July 31, 2006, written notice had been amended to remove seven of the nine violations. The civil money penalty was reduced to \$850.00 for the two remaining violations itemized as "Utilizes services of unregistered [Farm Labor Contractor]" and "Fail to register."

A Notice of Docketing and Prehearing Order was issued in this matter on July 2, 2007. On July 24, 2007, the Respondent submitted a letter requesting dismissal of the action and suggesting that the penalty amount be reduced, explaining that he and his attorney do not have time to litigate the matter. On July 31, 2007, the U.S. Department of Labor ("DOL" or "Plaintiff") submitted a Plaintiff's Motion for Summary Decision, Plaintiff's Statement of Uncontested Facts, and Memorandum in Support of Secretary's Motion for Summary Decision. The Plaintiff prayed for an order affirming the Secretary's assessment of a civil money penalty in the amount of \$850.00: \$500.00 for Respondent's failure to register as a farm labor contractor while engaging in farm labor contracting activities in violation of 29 C.F.R. § 500.40, and \$350.00 for Respondent's utilization of an unregistered farm labor contractor to perform a farm labor contracting activity in violation of 29 C.F.R. §§ 500.41 and 500.71. No response to the Plaintiff's motion has been received from the Respondent. On August 7, 2007, the Plaintiff submitted its Response to Prehearing Order.

Summary Decision Standard

The Rules of Practice and Procedure provide, in relevant part, that an “Administrative Law Judge may enter summary judgment . . . if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision” as a matter of law. 29 C.F.R. § 18.40. The OALJ procedural regulation at 29 C.F.R. § 18.40(c) provides that “[w]hen a motion for summary decision is made and supported” by the appropriate evidence, the “party opposing the motion may not rest upon the mere allegations or denials of such pleading[, but] must set forth specific facts showing that there is a genuine issue of fact for the hearing.” Furthermore, in reviewing a request for summary decision, all evidence and inferences must be viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. 262 (1986).

Finding of Facts

The Plaintiff describes the facts in this matter are as follows:

1. This proceeding is brought by the Secretary of Labor to assess civil money penalties for violations of provisions of the Act and the regulations issued thereto.
2. Respondent Schutte is the sole owner and proprietor of the Superior Avocado Picking Company, an unincorporated entity, which has been in operation since 1976.
3. Respondent works as an independent avocado picking coordinator.
4. Respondent has no employees.
5. Respondent receives the majority of his business in his capacity as an independent avocado picking coordinator from Calavo Growers, Inc. (“Calavo”).
6. Bob Coleman is the Director of Grower Relations for Calavo and is the principal contact for Respondent.
7. Respondent is not an employee of Calavo.
8. When Calavo has an avocado grove to be harvested, Coleman contacts Respondent to provide the workers necessary to harvest the grove.
9. Respondent then contacts another Farm Labor Contractor (“FLC”) to provide the necessary workers to harvest the grove for Calavo.
10. Respondent then meets with the FLC at the grove to be harvested to discuss the price to be paid by Calavo for the harvest, the boundaries of the grove, the amount of time to complete the harvest, and Respondent’s commission.
11. Respondent states that he ensures that “all picking companies that work for Calavo have all valid license [sic], insurance, workers comp, etc. before they are allowed to pick any fruit for Calavo.”
12. Respondent also states that he “will not hire the contractor unless he has all the required paperwork.”
13. Respondent then takes the FLC’s bid price to Coleman who, upon accepting the FLC’s bid, pays Respondent the total of the harvesting cost for the FLC providing the workers to harvest the grove. Respondent then deducts his commission, which he negotiates with the FLC (generally 1.5% of the total bid price).

14. After this initial meeting, Respondent has no further contact with the FLC or the workers performing the harvest, except to give the FLC the payment from Calavo.
15. In the instant matter, Coleman contacted Respondent to provide to provide the workers necessary to harvest the avocado grove at Dubois Ranch in Valley Center, California, in the spring of 2005.
16. Respondent then contacted FLC Marcos Soto to provide the workers for the spring, 2005 harvest at Dubois Ranch.
17. During the spring, 2005, harvest at Dubois Ranch, Respondent was not registered as an FLC.
18. Before beginning the spring, 2005, harvest at Dubois Ranch, FLC Marcos Soto met with Respondent at the grove at Dubois Ranch and discussed the boundaries of the grove, the price per pound of avocado picked, and the Respondent's commission.
19. During the meeting, FLC Soto discussed with Respondent that either FLC Soto or his foreman would be transporting workers during the harvest.
20. During the spring, 2005, harvest at Dubois Ranch, FLC Soto's FLC registration certificate did not authorize him to transport workers.
21. Respondent examined FLC Soto's FLC registration certificate but did not discuss the fact that FLC Soto was not registered to transport workers.
22. Coleman of Calavo accepted FLC Soto's bid to provide workers necessary to harvest Dubois Ranch in the spring of 2005.
23. FLC Soto provided the workers for the spring, 2005, harvest at Dubois Ranch.
24. By check number 247762, Calavo paid Respondent a commission of \$1,497.02 for providing the workers to harvest at Dubois Ranch in the spring, 2005.
25. FLC Soto or his foreman transported workers during the spring, 2005, harvest of Dubois Ranch.
26. On July 1, 2005, Wage and Hour Investigator Varela ("Investigator") met with Respondent, who admitted he was not registered as an FLC.
27. On July 13, 2005, the Investigator met with Respondent and gave him the necessary FLC registration application but Respondent did not complete the paperwork.
28. On July 26, 2005, the U.S. Department of Labor received an FLC registration application for Respondent.

Plaintiff's Statement of Uncontested Facts (July 31, 2007) (with supporting exhibits). The Respondent offers no evidence to refute these facts and, therefore, they are adopted in their entirety. As a result, there are no genuine issues as to any material fact in this matter.

Conclusions of Law

As it has been established that there are no genuine issues of material fact, the remaining question is whether the Plaintiff is entitled to summary decision as a matter of law. The Plaintiff argues that the Respondent qualifies as an FLC under Section 1802(7) of the Act and, as a result, is required to register as such before furnishing migrant and/or seasonal farm workers. 29 U.S.C. § 1811(a); 29 C.F.R. § 500.40. An FLC is defined as "any person . . . who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity," which is defined as "recruiting, soliciting, hiring, employing, furnishing, or

transporting any migrant or seasonal agricultural worker.” 29 U.S.C. §§ 1802(6), (7). The facts indicate that the Respondent acted as a middleman, furnishing workers from Marcos Soto for Calavo’s harvest, and is, therefore, an FLC for the purposes of the Act. The Respondent offers nothing to dispute this. As a result, the Respondent is in violation of the Act for failing to register as an FLC pursuant to 29 U.S.C. § 1811 and 29 C.F.R. § 500.40.

Additionally, the Plaintiff alleges that the Respondent violated 29 U.S.C. § 1811(b) of the Act, which states

A farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration, or a certificate of registration as an employee of the farm labor contractor employer, which authorizes the activity for which such individual is hired, employed, or used. The farm labor contractor shall be held responsible for violations of this chapter or any regulation under this chapter by any employee regardless of whether the employee possesses a certificate of registration based on the contractor's certificate of registration.

29 U.S.C. § 1811(b). The Regulations at 29 C.F.R. § 500.41 explain further that FLC “who utilizes the services of another [FLC] who is not his employee must also comply with the provisions of § 500.71.” Section 500.71 states

The Act prohibits any person from utilizing the services of a[n FLC] to supply migrant or seasonal agricultural workers without first taking reasonable steps to determine that the [FLC] possesses a valid Certificate of Registration, issued pursuant to the Act, which authorizes the activity for which the contractor is to be utilized. This prohibition also applies to a[n FLC] who wishes to utilize the services of another [FLC] (see § 500.41).

29 C.F.R. § 500.71.

The Respondent utilized the services of FLC Marcos Soto, who did not have a valid Certificate of Registration. Respondent offers no proof of reasonable steps taken to determine that Soto had a valid Certificate of Registration for transporting workers to the Calavo harvest site. As a result, Respondent is in violation of Section 1811(b) of the Act.

In conclusion, the undisputed material facts support the levying of civil money penalties against the Respondent – for failure to register as an FLC while engaging in farm labor contracting activities in violation of 29 C.F.R. § 500.40, and for utilization of an unregistered farm labor contractor to perform a farm labor contracting activity in violation of 29 C.F.R. §§ 500.41 and 500.71. As a result, the Plaintiff is entitled to summary decision as a matter of law.

ORDER

Based on the foregoing, the Plaintiff's Motion for Summary Decision is hereby GRANTED and the decision of the Secretary to levy \$850.00 in civil money penalties upon the Respondent is AFFIRMED. SO ORDERED.

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JOHN M. VITTON
Chief Administrative Law Judge