



Issue Date: 11 March 2008

CASE NO.: 2008-MSP-00001

IN THE MATTER OF

PACIFIC FORESTRY TECHNOLOGIES, INC.,

and

**MIGUEL LOZANO,
Respondents**

**DECISION AND ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY DECISION**

This case arises under the Migrant and Seasonal Agricultural Worker Protection Act ("Act"), 29 U.S.C. § 1801 *et. seq.*, and the implementing regulations at 29 C.F.R. Part 500. On December 18, 2007 the Associate Solicitor of the Fair Labor Standards Division issued an Order of Reference authorizing a hearing to be held on the Secretary of Labor's ("Secretary" or "Plaintiff") determinations to revoke the farm labor contractor (FLC) certificates of registration held by Pacific Forestry Technologies and Miguel Lozano (collectively Respondents and individually Respondent Pacific and Respondent Lozano) and to refuse to issue a FLC certificate of registration and a farm labor contractor employee (FLCE) certificate of registration to Respondent Lozano based upon alleged violations of the Act. On December 19, 2007 the Secretary moved for summary judgment on the determinations setting forth the following argument:

1. Section 103(a)(3), 29 U.S.C. § 1813 (a)(3) of the Act authorizes the Secretary to revoke and/or refuse to issue a certificate of registration for any person who has failed to comply with the requirements of the Act or regulations.
2. Respondents failed to comply with the Act and applicable regulations as evidenced by repeated investigations of the Wage and Hour Division at two locations of Respondents

from January 22, 2005 to February 26, 2005, and December 14, 2004 to February 3, 2005 which revealed the following violations and fines.

- (a) Failure to make\keep employer records (\$1,000.00 fine);
- (b) Failure to provide wage statement to workers (\$100.00 fine);
- (c) Failure to obtain prescribed insurance coverage (\$1,000.00 fine);
- (d) Failure to obtain prescribed insurance coverage (\$1000.00);
- (e) Failure to register employee (\$2,500.00 fine);
- (f) Failure to exhibit certificate (\$50.00 fine);
- (g) Misrepresenting conditions to workers (\$1,000.00 fine);
- (h) Failure to make/keep employer records (\$1,000.00 fine);
- (i) Failure to provide wage statement to workers (\$100.00 fine);
- (j) Failure to obtain prescribed insurance coverage (\$1,000.00);
- (k) Failure to register employee (\$3,000.00 fine); and
- (l) Failure to exhibit certificate (\$1,000.00 fine).

3. Respondents did not contest these violations and paid the assessed fines.
4. Respondent Pacific is a holder of an FLC certificate of registration at issue in this proceeding. Respondent Lozano signed this application as a principal of Respondent Pacific.
5. Respondent Lozano was the holder of an FLC certificate of registration in his name. That certificate was due to expire of November 30, 2005.
6. Respondent Lozano submitted two renewals applications for FLC certificates of registration in his name on December 2, 2005 and January 24, 2006. Respondent Lozano also submitted an application for an FLCE certificate of registration under Respondent Pacific on November 28, 2005.

7. On October 14, 2005 the Secretary notified Respondents of the determinations to revoke the FLC certificates of registration of Respondents based upon Respondents failure to comply with the Act and regulations.
8. On November 15, 2005, Respondents timely requested a hearing on the Secretary's determinations.
9. On December 14, 2006, the Secretary notified Respondent Lozano of its refusal to issue either an FLC certificate of registration or an FLCE certificate of registration based on his failure to comply with the Act and applicable regulations. Further, Respondent Lozano's renewal's application of his FLC certificate of registration was untimely, in that it was due to expire on November 30, 2005, and Respondent Lozano's renewal applications were not received until December 2, 2005, and January 24, 2006, instead of the required 30 days prior to expiration. 29 C.F.R. § 500.50(b).
- 10 Department of Labor records also showed a 2005 Wage and Hour investigation of Woodlands Forestry in which Lozano was a principal and was found to have violated a number of the Act provisions for which both the company and Lozano were assessed civil money penalties.

In reply to the Motion for Summary Judgment, Respondents admit the Secretary's factual allegations, but argues that the penalties assessed against Respondents do not provide a sufficient basis for revocation of Respondents certificates of registration, and further, that Respondents are entitled to a hearing because they timely request it. The standard for granting summary judgment or decision is set forth at 20 C.F.R. §18.40(d) which is derived from *Federal Rules of Civil Procedure* (FRCP) Rule 56. Section 18.40(d) permits an Administrative Law Judge ("ALJ") to enter summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show there is no genuine issues as to any material fact and that a party is entitled to summary decision." 20 C.F.R. § 18.40(d) (1994). A "material fact" is one whose existence affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "genuine issue" exists when the non-movant produces sufficient evidence of a material fact so that a fact finder is required to resolve the parties' differing versions at trial. *Id.* at 249.

In deciding a motion for summary decision, the court must consider all the material submitted by both parties, drawing all reasonable inferences in a matter most favorable to the non-movant. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-159 (1970). In other words, the court must look at the record as a whole and determine whether a fact-finder could rule in non-movant's favor. *Matsushita Elec. Industrial Co., v. Zenith Radio Corp.*, 475 U.S. 574, 587. The movant has the burden of production to prove that the non-movant cannot make a showing sufficient to establish an essential element of the case. *Celotex Corp., v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met its burden of production, the non-movant must show by evidence beyond the pleadings themselves that there is a genuine issue of material fact. *Id.* at 324. If the non-movant fails to sufficiently show an essential element of his case, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the non-movant's case necessarily renders all other facts immaterial." *Id.* at 322-323.

Section 103 (a)(3) of the Act provides in pertinent part the following

Sec.103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder...(3) has failed to comply with this Act or any regulation under this Act.

In this case, it is clear that Respondents were repeatedly advised of their right to contest Wage and Hour findings of violations and assessed penalties and failed to do so even though by so doing these determinations became the final and non appealable order of the Secretary. As such the Secretary was acting clearly within her authority to refuse to renew or revoke the FLC and FLCE certificates at issue. *In the Matter of U.S. Dept. of Labor v. Sam Hidemi Matsumoto*, 87-MSP-4 (ALJ Apr. 5, 1988).

Further, Respondent Lozano's attempt to renew his FLC certificate of registration was untimely in that no application was received by October 31, 2005 or 30 days before its expiration pursuant to 29 U.S.C. §1814 (b)(1)(B) or 29 C.F.R. 500.50(b). *In the Matter of Evergreen Forestry Services, Inc., and Peter Smith, III*, 2003-MSP-3 (ALJ, July 9, 2003).

Considering the entire record, including Respondents' response, I find there are no genuine issues of material fact, and that Plaintiff is entitled to summary judgment as a matter of law. Accordingly, I grant Plaintiff's motion to revoke the certificate of registration held by Respondent Pacific, to refuse to issue a FLC certificate of registration and a FLCE certificate of registration to Respondent Lozano. Further, Respondent Lozano's request for a hearing regarding the revocation of his individual certificate of registration is dismissed as moot.

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CLEMENT J. KENNINGTON
Administrative Law Judge

NOTICE OF APPEAL: To appeal, you must file a Petition for Issuance of a Notice of Intent ("Petition") to modify or vacate that is received by the Administrative Review Board ("Board") within twenty (20) days of the date of issuance of the administrative law judge's decision. See 29 C.F.R. §§ 500.263 and 500.264; Secretary's Order 1-2002, 67 Fed. Reg. 64272 (2002). The Board's address is Administrative Review Board, U. S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. A copy of the administrative law judge's decision must be attached to the Petition that is filed with the Board. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief, Administrative Law Judge, U. S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. See 29 C.F.R. § 500.264(b).

If the Board declines to modify or vacate the administrative law judge's decision, then the decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 500.262(g).