

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

United States of America, Complainant v. Sparky's Waterfront Saloon,
Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100272.

ORDER OF DISMISSAL, SETTLED

(January 12, 1990)

MARVIN H. MORSE, Administrative Law Judge

Appearances: RAFAEL B. ORTIZ-SEGURA, Esq., for the Immigration and
Naturalization Service.

ROBERT L. KING, Esq., for the Respondent.

DISCUSSION:

This proceeding was initiated before me when, by notice of hearing dated June 16, 1989, respondent was advised of the filing by the Immigration and Naturalization Service ('`INS'') of a complaint alleging violations of the employment verification requirements of Section 101 of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a ('`IRCA'').

By a joint ``Motion to Approve Consent Findings,''' executed by counsel for complainant and for respondent, the parties have submitted under 28 C.F.R. § 68.12(a)(1) a proposed agreement in settlement of this action. The terms of the agreement are contained in a document entitled, ``Consent Findings,''' executed by respondent and also by counsel for both parties on December 27, 1989.

The agreement between the parties reflected in the ``Consent Findings'' is in a form which satisfies the controlling regulation for disposition by the judge of ``[a]ny agreement containing consent findings'' 28 C.F.R. § 68.12(b). Therefore, as provided by 28 C.F.R. § 68.12(c), subject to the modification made by this Order so as to comply with the requirement of 8 U.S.C. § 1324a(e)(5), the agreement is given substantive effect.

The document entitled ``Consent Findings,' ' including the recitation of facts contained therein, to the extent that it is consistent with this Order, is adopted and made a part of this Order, according to its terms as fully as if set out herein.

The parties have agreed that respondent admits each and every allegation set forth in the complaint, including the allegations of Counts I through III of the Notice of Intent to Fine incorporated therein, thereby conceding violations by respondent of Section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. § 1324a(a)(1)(B)). I conclude that the document entitled ``Consent Findings' ' is fair and satisfactory, and there is no reason not to accept it, within the contemplation of 28 C.F.R. § 68.12.

However, by ``mitigating' ' and waiving collection of civil money penalties in their entirety in acknowledgment of ``severe' ' damage suffered by respondent in consequence of Hurricane Hugo, INS has disabled me from issuing an order which embraces its terms as the judge's ``consent findings.' ' This is so because section 101 of IRCA, at 8 U.S.C. § 1324a(e)(5), seems to me unmistakably to require me to require payment of at least the statutory minimum civil money penalty, i.e., \$100 for each individual with respect to whom a paperwork violation has been found. Stated differently, I am without discretion, if I make the findings tendered by the parties, to avoid ordering payment of not less than \$100 per violation conceded, \$3800 in the aggregate.

The dilemma discussed above need not frustrate the obvious intent of both parties to terminate this proceeding without a liability assessment. At paragraph 4 of the agreement between the parties, denominated ``Consent Findings,' ' respondent has withdrawn its request for hearing. Whatever preference INS might have had for consent findings rather than dismissal, settled, I detect in its posture before me that in consequence of Hurricane Hugo it is important to it to adopt the benevolent policy of abandoning civil money penalties. In good conscience, therefore, I issue this Order of Dismissal, Settled, restoring the parties to the status quo as it existed prior to the request for hearing.

The hearing previously scheduled is canceled.

SO ORDERED.

Dated this 12th day of January, 1990.

MARVIN H. MORSE
Administrative Law Judge