

In the Matter of
LAMBERTUS SANDKER, dba BLUE RIVER REFORESTATION,

Case No. 12-00

February 11, 2000

SYNOPSIS

Where the Agency proposed to refuse to renew Respondent's farm/forest labor contractor license, the forum granted the Agency's motion for summary judgment based on uncontroverted facts showing that Respondent had violated ORS 658.415(15), ORS 658.417(3), 658.440(1)(e), and had not paid anything towards satisfying the judgment from a prior Final Order entered by the Bureau against him. The Commissioner issued an Amended Final Order addressing exceptions that were timely filed by Respondent and inadvertently not considered in the Final Order. ORS 658.445.

The above-entitled case was scheduled for hearing on October 19, 1999, before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was scheduled in the Bureau of Labor and Industries' office, 165 E. 7th, Suite 220, Eugene, Oregon. The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by David Gerstenfeld, an employee of the Agency. Respondent Lambertus Sandker represented himself.

Having fully considered the entire record in this matter, I, Jack Roberts, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On August 9, 1999, the Agency issued a Notice of Intent to Refuse to Renew Farm/Forest Labor Contractor License ("Notice") to Respondent. The Notice informed Respondent that the Commissioner intended to deny Respondent's application

to renew his farm/forest labor contractor license. The Notice cited the following bases for the proposed action:

“1. On or about March 10, 1999, Respondent filed an application with the Bureau of Labor and Industries (“Bureau”) to renew his farm labor contractors license with a forestation endorsement.

“2. On May 7, 1999, the Commissioner issued a Final Order in case number 15-99 (“Final Order”). The Final Order found that Respondent had committed one violation each of ORS 658.440(1)(e), 658.417(3), 658.415(15) and 653.050. The Final Order assessed civil penalties of \$2,250 against Respondent.

“3. Respondent has not paid any amounts towards the civil penalties assessed in the Final Order.

“4. Respondent does not have the requisite character, reliability nor competence to receive a farm/forest labor contractors license as evidenced by the following (ORS 658.420, 658.445 and OAR 839-015-0140):

“1) Prior violations of ORS 658.405 to 658.485 as found in the Final Order. OAR 839-015-0520(3)(a);

“2) Failure to pay the civil penalties lawfully assessed in the Final Order. OAR 839-015-0520(3)(d);

“3) Failure to pay, in a timely manner, the civil penalties assessed in the Final Order. OAR 839-015-0520(3)(n); and

“4) Failure to promptly satisfy the Final Order, which was subsequently recorded in the County Clerk Lien Record for Lane County^[1] and is enforceable as a judgment pursuant to ORS 652.332(5). OAR 839-015-0520(3)(o).”

2) On August 11, 1999, the Agency served the Notice on Respondent by certified mail.

3) On August 16, 1999, Respondent filed a request for hearing, in which he “den[ied] admission of guilt to all allegations presented.”

4) On August 18, 1999, the Agency sent Respondent a “Notice of Insufficient Answer to Notice of Intent to Refuse to Renew Farm/Forest Labor Contractor License” in which Respondent was advised that his “**Answer must include an admission or denial of each fact alleged in the Order and a statement of each relevant defense to the allegations.**” (Emphasis in original)

5) On August 23, 1999, Respondent filed an answer to the Notice in which he denied the allegations of the Notice in the following language:

“1) Prior violation of ORS 658.405 to 658.485. Deny quilt as evidence by effort to obtain Performance Bond through Portland Insurance Companies. OAR 839-015-0520(3)(a).

“2) Failure to pay civil penalties lawfully assessed in the Final Order. OAR 839.015-0520(3)(d). Deny quilt as evidence by financial inability to pay penalty.

“3) Failure to pay civil penalties OAR 839-015-0520(3)(n). Deny quilt as evidence by financial inability to pay penalty.

“4) Failure to promptly satisfy the Final Order. ORS 652.323(s), OAR 839-015-0520(3)(o). Deny quilt with evidence as to the financial inability of respondent to satisfy Final Order.”²

6) On September 8, 1999, the Agency sent the Hearings Unit a request for a hearing date, and on September 13, 1999, the Hearings Unit issued a Notice of Hearing setting forth the time and place of the hearing. The notice was served on Respondent together with the following: a) a Summary of Contested Case Rights and Procedures containing the information required by ORS 183.413; and b) a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0440.

7) On September 23, 1999, the Agency filed a motion to amend the Notice to indicate that the Final Order in contested case number 15-99 was recorded with the County Recorder of Lane County, not Marion County.

8) On September 23, 1999, the Agency filed a motion for summary judgment, with supporting documents as to paragraphs 1 through 4 of the notice, reciting that there was no genuine issue of material fact as to the violations alleged in those paragraphs and that the Agency was entitled to judgment on the violations as a matter of law.

9) In accordance with OAR 839-050-0150, Respondent had seven days within which to respond to the Agency's motion. The Hearings Unit received no response.

10) On October 7, 1999, the ALJ granted the Agency's September 23, 1999 motion to amend the Notice.

11) On October 7, 1999, the ALJ granted the Agency's motion for summary judgment, ruling as follows, in pertinent part:

"A motion for summary judgment may be granted where no genuine issue as to any material fact exists and a participant is entitled to a judgment as a matter of law, as to all or any part of the proceedings. OAR 839-050-0150(4)(B). The evidentiary burden on the participants in a motion for summary judgment as follows:

'The moving party has the burden of showing that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. The record on summary judgment is viewed in the light most favorable to the party opposing the motion. *This is true even as to those issues upon which the opposing party would have the trial burden.*'

"*Jones v. General Motors Corp.*, 325 Or 404, 420 (1997) (quoting *Seeborg v. General Motors Corporation*, 284 Or 695, 699 (1978)) (emphasis added by *Jones* court).

"The issues in this case are straightforward. BOLI received Respondent's application to renew his farm/forest labor contractor license ('license') on March 10, 1999. The Agency seeks to refuse to renew Respondent's license pursuant to ORS 658.445, alleging that Respondent's character, reliability or competence makes Respondent unfit to act as a farm labor contractor.

"In its Notice of Intent, the Agency alleges that the following facts demonstrate Respondent's lack of character, reliability or competence:

"1) Respondent's prior violations of ORS 658.405 to 658.485 as determined in the Commissioner's Final Order in Case No. 15-99;

"(2) Respondent's failure to pay the civil penalties lawfully assessed in the Final Order;

"(3) Respondent's failure to pay, in a timely manner, the civil penalties assessed in the Final Order;

"(4) Respondent's failure to promptly satisfy the Final Order, which was recorded in the County Clerk Lien Record for Lane County and is enforceable as a judgment pursuant to ORS 652.332(5).

"Respondent denies prior violations of ORS 658.405 to 658.485 as determined in the Commissioner's Final Order in Case No. 15-99 ('Final Order'), alleging his 'effort to obtain Performance Bond through Portland Insurance Companies.'

“Respondent also denies failing to pay the civil penalties lawfully assessed in the Final Order by reason of his financial inability to pay the penalties.

“The Facts and the Law

“Respondent’s prior violations of ORS 658.405 to 658.485.

“Subsequent to a contested case hearing held before this forum on March 23, 1999, the Commissioner issued a Final Order on May 7, 1999, in which he concluded that Respondent had violated ORS 658.440(1)(e), 658.415(15), 658.417(3), and 653.050 in 1998. The Commissioner ordered Respondent to pay \$2,250.00 in civil penalties based on those violations. The Agency alleges those identical violations as grounds for refusing to renew Respondent’s license, and contends that issue preclusion prevents Respondent from relitigating those violations. For issue preclusion to apply, five requirements must be met: (1) The issue(s) in the two proceedings must be identical; (2) The issue(s) must have been actually litigated and essential to a final decision on the merits in the prior proceeding; (3) The party sought to be precluded must have had a full and fair opportunity to be heard on that issue; (4) The party sought to be precluded must have been a party or in privity with a party in the prior proceeding; and (5) The prior proceeding was the type of proceeding to which this forum will give preclusive effect. *In the Matter of Scott Nelson*, 15 BOLI 168, 175-81 (1996). Here, all these requirements are met. Consequently, Respondent is precluded from relitigating the violations of ORS 658.440(1)(e), 658.415(15), 658.417(3), and 653.050 found by the Commissioner in his Final Order. The forum concludes, as a matter of law, that Respondent violated ORS 658.440(1)(e), 658.415(15), and 658.417(3) in 1998.

“Respondent’s failure to pay the civil penalties assessed in Commissioner’s Final Order.

“Respondent does not deny that he has failed to pay the civil penalties, but merely alleges he is financially unable to pay them. There is no dispute that the Final Order was recorded as a judgment on May 18, 1999, in Lane County. An affidavit by Steven McGlone, an Oregon Department of Revenue Agent assigned to collect the money owed by Respondent as a result as the judgment resulting from the Final Order in Case #15-99 confirms that Respondent had paid nothing towards the judgment as of September 20, 1999. Based on this evidence, the forum concludes that there is no genuine dispute that Respondent has failed to pay any of the debt arising from the civil penalties assessed against him in the Final Order, or the resulting judgment.

“Conclusion

“The Agency has, by administrative rule, clarified the types of actions that demonstrate that a farm labor contractor is unfit to obtain a

license renewal based on the contractor's character, reliability or competence. Those actions include:

"(1) 'Violations of any section of ORS 658.405 to 658.485.' OAR 839-15-520(3)(a).

"(2) 'Failure to comply with federal, state or local laws * * * relating to the payment of * * * any fee or assessment of any sort.' OAR 839-15-520(3)(d).

"(3) 'Failure to pay all debts owed, including advances and wages, in a timely manner.' OAR 839-15-520(3)(n).

"(4) 'Failure to promptly satisfy any or all judgments levied against the applicant/licensee.' OAR 839-15-520(3)(o).

"In this case, Respondent has violated OAR 839-15-520(3)(a) as a matter of law. There is no genuine dispute of fact that Respondent has also violated OAR 839-15-520(3)(d), (n), and (o). Respondent's defense of financial inability to pay is not applicable to this action.

"The forum concludes that Respondent's violations of the Agency's aforementioned administrative rules demonstrate that Respondent's character, reliability or competence make him unfit to act as a farm labor contractor.

"The Agency's motion for summary judgment is **GRANTED.**"

12) On January 7, 2000, the ALJ issued a proposed order that notified the participants that they were entitled to file exceptions to the proposed order within ten days of its issuance.

13) On January 15, 2000, Respondent timely filed exceptions to the proposed order.

14) On January 28, 2000, the Commissioner issued a Final Order in which Respondent's exceptions were inadvertently not addressed or considered.

FINDINGS OF FACT – THE MERITS

1) On or about March 10, 1999, Respondent filed an application with the Bureau of Labor and Industries to renew his farm/forest labor contractor license.

2) On May 7, 1999, the Commissioner issued a Final Order in case number 15-99. The Final Order found that Respondent had committed one violation each of

ORS 658.415(15), 658.417(3), 658.440(1)(e), and 653.050. The Final Order assessed civil penalties of \$2,250.00 against Respondent.

3) The Final Order was recorded as a judgment in Lane County on May 18, 1999, Document No. 99044806, Reel No. 2549R.

4) As of September 20, 1999, Respondent had not made any payment towards satisfying the judgment. In addition, Respondent had not made any arrangements towards paying the judgment.

ULTIMATE FINDINGS OF FACT

1) On or about March 10, 1999, Respondent filed an application with the Bureau of Labor and Industries to renew his farm/forest labor contractor license.

2) On May 7, 1999, the Commissioner issued a Final Order in case number 15-99. The Final Order found that Respondent had committed one violation each of ORS 658.415(15), 658.417(3), 658.440(1)(e), and 653.050. The Final Order assessed civil penalties of \$2,250.00 against Respondent.

3) The Final Order was recorded as a judgment in Lane County on May 18, 1999, Document No. 99044806, Reel No. 2549R.

4) As of September 20, 1999, Respondent had not made any payment towards satisfying the judgment. In addition, Respondent had not made any arrangements towards paying the judgment.

CONCLUSIONS OF LAW

1) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondent herein, including provisions of Oregon law regarding licensing of farm and forest labor contractors, pursuant to ORS 658.407, 658.410, 658.435.

2) ORS 658.445 provides, in pertinent part:

“The Commissioner of the Bureau of Labor and Industries may * * * refuse to renew a license to act as a labor contractor upon the commissioner’s own motion * * * if:

“(1) The licensee * * * has violated or failed to comply with any provision of ORS 658.405 to 658.503 * * *; or

“* * * * *

“(3) The licensee’s character, reliability or competence makes the licensee unfit to act as a farm labor contractor.”

OAR 839-015-0520(3) provides, in pertinent part:

“The following actions of a farm or forest labor contractor * * * licensee * * * demonstrate that the * * * licensee’s character, reliability or competence make the * * * licensee unfit to act as a farm or forest labor contractor:

“(a) Violations of any section of ORS 658.405 to 658.485;

“* * * * *

“(d) Failure to comply with federal, state or local laws or ordinances relating to the payment of * * * any tax, fee or assessment of any sort;

“* * * * *

“(n) Failure to pay all debts owed, including advances and wags, in a timely manner;

“(o) Failure to promptly satisfy any or all judgments levied against the applicant/licensee[.]”

Respondent’s violations of ORS 658.415(15), 658.417(3), 658.440(1)(e), and OAR 839-015-0520(3)(a), (d), (n), and (o) demonstrate that Respondent’s character, reliability or competence make Respondent unfit to act as a farm or forest labor contractor.

3) OAR 839-015-0520(4) provides:

“When a farm or forest labor contractor’s license application is denied or a license is revoked or when the commissioner refuses to renew a license, the commissioner will not issue the applicant or licensee a license for a period of three (3) years from the date of the denial, refusal to renew or revocation of the license.”

Under the facts and circumstances of this record, and according to the law applicable in the matter, the Commissioner of the Bureau of Labor and Industries has the authority to and may refuse to renew Respondent’s farm/forest labor contractor license. Refusing to

renew Respondent's farm/forest labor contractor license as specified in the Proposed Order below is an appropriate exercise of the Commissioner's authority.

OPINION

The ALJ granted the Agency's pre-hearing motion for summary judgment. That ruling is confirmed. Respondent chose not to oppose the Agency's motion and did not controvert the evidence that the Agency submitted in support of its motion. The Agency's evidence established the bases for refusing to renew Respondent's license set forth in the Conclusions of Law. It is clear that the character, reliability and competence of Respondent are such that Respondent's application to renew his farm labor contractor license should be denied.

RESPONDENT'S EXCEPTIONS

In his exceptions, Respondent seeks to relitigate violations set out in the Final Order in Case #15-99 that resulted in the assessment of \$2,250 in civil penalties he now finds himself unable to pay because of economic circumstances. As noted in Finding of Fact – Procedural #11, Respondent is barred from relitigating these violations based on the doctrine of issue preclusion. The forum's task is to enforce the law in an even-handed manner as directed by the legislature, its own administrative rules, and legal precedent. In this case, the forum applies the law in the same manner to Respondent as it has to prior similarly-situated Respondents.³ Respondent's exceptions are overruled.

ORDER

NOW, THEREFORE, as authorized by ORS 658.445, the Commissioner of the Bureau of Labor and Industries hereby refuses to renew Lambertus Sandker's license to act as a farm or forest labor contractor, effective on the date that the Final Order is issued.

¹ The original Notice alleged the prior Final Order was recorded in “Marion County.” This was corrected by amendment on October 7, 1999.

² Respondent’s answer has been reproduced exactly as it appears in the original document. Based on the context, the forum has interpreted “quilt” as meaning “guilt.”

³ See, e.g., *In the Matter of Amalia Ybarra*, 10 BOLI 75, 82 (1991) (contractor denied a license based on misrepresentations on her application for a license); *In the Matter of Melvin Babb*, 14 BOLI 230, 239 (1995) (ignorance of the law does not constitute mitigation); *In the Matter of Efrain Corona*, 11 BOLI 44, 57 (1992), *aff’d without opinion*, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993) (forum applied the doctrine of collateral estoppel - now referred to as issue preclusion - to prevent the relitigation of an issue that a respondent had a full and fair opportunity in a previous proceeding to litigate).