

In the Matter of
ODON SALINAS MORFIN,
dba Diamond Tree Trimming or Salinas Tree Trimming, Respondent.

Case Number 03-96
Final Order of the Commissioner
Jack Roberts
Issued June 18, 1997.

SYNOPSIS

Respondent failed to attend the hearing and was found in default. Finding that the Agency had presented a prima facie case that Respondent had acted as farm labor contractor without a license, failed to register a farm-worker camp, and failed to pay wages timely, the Commissioner imposed civil penalties of \$65,000. ORS 653.145; 658.410; 658.415; 658.440 (1)(c); 658.750(1); OAR 839-15-125; 839-14-065.

The above-entitled contested case came on regularly for hearing before Warner W. Gregg, designated as Administrative Law Judge (ALJ) by Jack Roberts, Commissioner of the Bureau of Labor and Industries of the State of Oregon. The hearing was held on October 16, 1996, in room 1004, State Office Building, 800 NE Oregon Street, Portland, Oregon. The Wage and Hour Division of the Bureau of Labor and Industries (the Agency) was represented by Judith Bracanovich, an employee of the Agency. Odon Salinas Morfin (Respondent¹), was not present and was not represented by counsel, although properly served with notice of this proceeding, and was adjudged by the ALJ to be in default. Paulo Salinas Martinez and Guillermo Salinas Martinez, originally named as Respondents herein, were represented by James F. Halley, Attorney at Law, Portland, who was present by telephone, and upon the

motion of the Agency, were dismissed as respondents herein pursuant to a Consent Order disposing of their portion of the case.

The Agency called as witnesses former Wage and Hour Division Compliance Specialists Raul Pena and Gabriel Silva. Respondent presented no evidence.

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, 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 February 22, 1995, the Agency issued a Notice of Intent to Assess Civil Penalties (Notice of Intent) naming as Respondents Odon Salinas Morfin, Paulo Salinas Martinez, and Guillermo Salinas Martinez, dba Diamond Tree Trimming or Salinas Tree Trimming, unlicensed farm labor contractors. The Notice of Intent, as amended at hearing to charge only Respondent, sought to assess civil penalties against Respondent in the amount of \$65,000. The bases for the proposed civil penalties were alleged as follows (amended allegations appear [in brackets]):

"1) Acting As A Farm Labor Contractor Without A Valid License. ([Eight] Violations) Between on or around August 1993, and in or around December 1994, [Respondent], for an agreed remuneration or rate of pay, employed and supplied workers to farmers in Oregon as set out in Appendix 1, attached hereto and incorporated herein. At all times material, [Respondent] did not possess [a] valid farm labor contractor license, in violation of ORS 658.410, ORS 658.415 and OAR 839-15-125. AGGRAVATION: [Respondent] knew or should have known of the violations, multiple (repeated) violations, magnitude and seriousness of the violations. Civil Penalty of [\$15,000].

"2) Failure To Register A Farm-Worker Camp With The Commissioner. Between in or about October 1994 through November 1994, [Respondent was] operating a farm-worker camp at 109 Eluria Street, Oregon City, Oregon, without having first registered said camp with the Commissioner, in violation of ORS 658.750(1) and OAR 839-14-065. AGGRAVATION: [Respondent] knew or should have known of the violation; magnitude and seriousness of the violation. Civil Penalty of \$2,000.

"3) Failure To Make Timely Payment of Wages Owed: [24] Violations. Between October 26, 1994 through November 17, 1994, [Respondent] received the farm labor services of [24] employees, as set out in Appendix 2, attached hereto and incorporated herein, within the state of Oregon, under contracts of employment with said workers that required [Respondent] to pay for such labor at the rate of \$1,000 for one month's labor (\$36.00 daily wage). [Respondent] failed to pay all sums due said workers under the contracts of employment immediately upon the termination of employment, in violation of ORS 65[2].145 and ORS 658.440(1)(c). AGGRAVATION: [Respondent] knew or should have known of the violations, the magnitude and seriousness of multiple (repeated) violations. Civil Penalty In the Amount of [\$48,000]."

The Notice of Intent was served on Respondent personally by the Multnomah County Sheriff on March 6, 1995, at 11540 NE Inverness Drive, Portland, Oregon.

2) On April 3, 1995, Respondent through counsel denied the allegations of the Notice of Intent and moved for a stay of the proceedings based on his being in federal custody, being unable to answer the charges fully without waiving his right against self-incrimination, and reserving the right to amend his response if necessary to present evidence, and requested a contested case hearing.

3) The Agency requested a hearing date and on August 11, 1995, the Hearings Unit issued to Respondent and the Agency a Notice of Hearing setting forth the time and place of the requested hearing and the designated ALJ, together with the following: a) a Notice of Contested Case Rights and Procedures containing the information required by ORS 183.413, and b) a complete copy of the Agency's administrative rules regarding the contested case process — OAR 839-50-000 through 839-50-420.

4) On September 1, 1995, the ALJ postponed the hearing set for September 13, 1995, pending receipt of requested information regarding the availability for hearing of Respondent and the other necessary parties. Following a lengthy delay, during which none of the necessary parties were available for hearing, the ALJ on July 23,

1996, set the hearing to commence August 27, 1996. On August 12, 1996, upon motion by the Agency, the hearing was reset for October 15, 1996. On September 12, 1996, the participants agreed to a one day delay and on September 20 the order of the ALJ approved a one day delay to October 16, 1996.

5) A copy of the ALJ's July 23, 1996, Amended Notice of Hearing setting the hearing on August 27, 1996, was mailed to Respondent, postage prepaid, at 109 Eluria Street, Oregon City, Oregon, 97045 on July 23, 1996, and not returned. A copy of the ALJ's August 12, 1996, Amended Notice of Hearing setting the hearing on October 15, 1996, was mailed to Respondent, postage prepaid, at 109 Eluria Street, Oregon City, Oregon, 97045 and at 14290 S. Marjorie Lane, #2002, Oregon City, Oregon, 97045, on August 19, 1996, and not returned.² A copy of the ALJ's September 20, 1996, Order Resetting Hearing to October 16, 1996, was mailed to Respondent, postage prepaid, at 14290 S. Marjorie Lane, #2002, Oregon City, Oregon, 97045, on September 20, 1996, and not returned.

6) On October 7, 1996, the Agency filed its summary of the case. On October 14, 1996, with leave of the forum, counsel for then Respondents Paulo Salinas Martinez and Guillermo Salinas Martinez, filed a summary of the case.

7) At the commencement of the hearing, counsel for Paulo Salinas Martinez and Guillermo Salinas Martinez stated that each of them had received the Notice of Contested Case Rights and Procedures and had no questions about it.

8) At the commencement of the hearing, pursuant to ORS 183.415(7), the ALJ orally advised the participants of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the proceeding.

9) At the commencement of the hearing, the Agency and counsel for Paulo Salinas Martinez and Guillermo Salinas Martinez orally presented for the record the

provisions of an agreed upon disposition of the charges against Paulo and Guillermo Salinas Martinez, pursuant to the rules of this forum. Each agreed to execute a Consent Order admitting his part in the violations charged, agreeing to henceforth abide by Oregon's farm labor contractor law, and agreeing not to seek a farm labor contractor's license for a period of three years.³ As a result, Respondents Salinas Martinez were dismissed as respondents in this proceeding.

10) At the commencement of the hearing, the ALJ found that Respondent was served with the Notice of Intent, that he was notified by mail of the hearing, that he was not present, and that he was in default.

11) At the commencement of the hearing, the Agency moved for certain amendments to the Notice of Intent. Because the proposed amendments served to reduce the obligation of the defaulting Respondent, the ALJ approved the amendments, which are reflected in the first paragraph of these procedural findings.

12) The proposed order, which included an exceptions notice, was issued April 28, 1997, and exceptions were due May 8, 1997. No exceptions were received.

FINDINGS OF FACT -- THE MERITS

1) Raul Pena was employed as a Compliance Specialist with the Farm Labor Unit of the Agency from August 1988 to October 1995. His duties included investigation of alleged violations of wage and hour laws and farm labor contracting laws. He is fluent in both English and Spanish.

2) Gabriel Silva was employed as a Compliance Specialist with the Farm Labor Unit of the Agency from November 1989 to February 1995. His duties included investigation of alleged violations of wage and hour laws and farm labor contracting laws. He is fluent in both English and Spanish.

3) Respondent Odon Salinas Morfin is the father of Paulo Salinas Martinez

and Guillermo Salinas Martinez. He was also known to agencies and persons with whom he had dealings as Odon Salinas.

4) In October 1994, Pena learned that Respondent was contracting with a Clackamas County farmer for the harvest of Christmas trees. Knowing that Respondent was not licensed for that activity, Pena attempted to locate him, first in Newberg and later in Washington County, but was not successful.

5) In early November 1994, Pena learned that the US Immigration and Naturalization Service (INS) had located Respondent at 109 Eluria Street, Oregon City, where he and his family were using the services of 30 or more undocumented workers in the harvesting of Christmas trees. Respondent was also providing housing for these workers at the Eluria Street address. He and his two sons were taken into federal custody.

6) Following the INS raid, some of the workers were relocated in an immigrant shelter in Mt. Angel. Working from a list provided by INS, Pena interviewed and took wage claims and assignments from about two dozen of them on November 17 and 21, 1994. Each claimant gave the dates, hours, and rate of pay, and a wage claim was prepared from that information. Pena interviewed each worker separately, in Spanish. Each told him that Respondent was the employer. Pena saw each worker sign his own wage claim. All were from the same region in Mexico.

7) In July 1994, the record owner of 109 Eluria Street, Oregon City, sold the house on contract to Paulo and Guillermo Salinas Martinez. Motor vehicles parked there on November 7, 1994, were registered to them at that address.

8) Silva interviewed about two dozen of the workers at the Mt. Angel shelter. They stated that they had worked in Christmas trees, that Respondent was their employer, and that they were still owed about ten days' pay. They had agreed to work

for one month, October 26 to November 26, for \$1,000. Previously, they had been paid in cash about every eight days on a piece work or per tree basis. They did not receive pay stubs or a tabulation of hours worked. They had stayed at Respondent's home, some for as long as two months. Respondent provided them with meals and transportation as well as sleeping quarters. They were unfamiliar with the area and never knew the name of the owner of any farm where they worked.

9) On November 15, 1994, Silva spoke with Paulo and Guillermo Salinas Martinez, who disputed some of the statements of the workers, but admitted that the business owed the workers some money. They stated they had to speak with Respondent regarding farmers who still owed him money. Respondent had made the arrangements for the work with the farmers. They acknowledged that neither they nor Respondent had an Oregon farm labor contractor license or an Oregon farm-worker camp registration.

10) Emerald Christmas Tree Company, Bellevue, Washington (Emerald), had contracted with a number of Oregon growers for harvesting Christmas trees in 1993 and 1994 and was aware that Respondent's "family business" had done both shearing and harvesting work for several growers on the recommendation of Emerald.

11) On November 17, 1994, Silva again spoke with Paulo Salinas Martinez, who verified that certain workers on a list Silva had left with him on November 15 were owed for 10 days work. Paulo Salinas Martinez stated that there was workers' compensation coverage in his name.

12) Respondent had workers' compensation coverage through SAIF in 1992 as Salinas Tree Trimming at 23565 NE Sunnycrest, Newberg. In 1994, there was no workers' compensation coverage for Respondent, Paulo Salinas Martinez, Guillermo Salinas Martinez, Salinas Tree Trimming, or Diamond Tree Trimming.

13) On November 18, 1994, Silva authored an Agency wage claim demand letter to Respondent and his two sons regarding the claims for unpaid wages, assigned to the Commissioner for collection, of 28 workers. The wages due were calculated on the basis of \$1,000 per month, covered claims for from one to nine days per worker, and totaled \$7,865.88.

14) On November 18, 1994, based on information he had developed from growers that Emerald or its agents had assisted Respondent in negotiating Christmas tree harvesting and shearing contracts, Silva authored an identical wage claim demand letter to Emerald, through its attorney, covering the same claims totaling \$7,865.88.

15) On November 29, 1994, after negotiations between Silva and Emerald's attorney, Emerald submitted its check payable to the Agency in the amount of \$8,526, covering certain listed worker claims including those which Pena had obtained in connection with workers employed by Respondent. In separate correspondence, Emerald acknowledged that it had contracted with Respondent as Diamond Tree Trimming to cut, bale, and load trees in 1993 and 1994, and had paid Respondent (Diamond) for all work except that represented by Emerald's November 29 check to the Agency.

16) Following the receipt of the funds from Emerald, the Agency in turn paid the amounts claimed by each of 24 workers.⁴

17) The investigative records of the Agency show that in 1988, Respondent was operating as an unlicensed farm labor contractor and suspected of operating a farm-worker camp. He was directed at that time to obtain a license or risk civil penalty.

18) The Agency licensing unit, which keeps the records of farm labor contractor licenses and farm-worker camp registrations, has no record of a farm labor contractor license for Respondent, Paulo Salinas Martinez, Guillermo Salinas Martinez,

Diamond Tree Trimming, or Salinas Tree Trimming for 1993, 1994, or any other year.

19) The Agency licensing unit has no record of a farm-worker camp registered to or by Respondent, Paulo Salinas Martinez, Guillermo Salinas Martinez, Diamond Tree Trimming, or Salinas Tree Trimming for 1994, or any other year.

20) Pena and Silva pursued investigation of some of the growers with whom Respondent contracted. The Agency sought and received civil penalties from growers Dennis Spath (1993), Larry Tracy (1993), Melvin Babb (1993), William Tucker (1993, 1994), Gordon Schuler (1993), and Bob Poublon (1993, 1994) for failure to verify the license status of Respondent, Paulo Salinas Martinez, and/or Guillermo Salinas Martinez, which constituted violations by the respective growers of ORS 658.437(2).

ULTIMATE FINDINGS OF FACT

1) At times material herein, and particularly in or around August 1993 and in or around December 1994, Respondent utilized the personal services of persons within this state in connection with the production or harvesting of farm products for an agreed remuneration or rate of pay.

2) Respondent was not a licensed farm labor contractor in Oregon in 1993 or 1994, or at any other time.

3) In 1994, Respondent provided food and lodging to the farmworkers in his employ in Oregon City.

4) In 1994, Respondent did not register a farmworker camp in Oregon City with the Commissioner.

5) In 1994, Respondent failed to pay wages when due to at least 24 persons who had worked for Respondent in Oregon.

CONCLUSIONS OF LAW

1) At times material herein, ORS 658.405 provided, in part:

"(1) 'Farm labor contractor' means any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another to work in * * * the production or harvesting of farm products * * *."

At times material herein, ORS 658.407 provided:

"The Commissioner of the Bureau of Labor and Industries shall administer and enforce ORS 658.405 to 658.503 and 658.830, and in so doing shall:

"(1) Investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under ORS 658.415 (3).

"(2) Take appropriate action to establish the liability or lack thereof of the farm labor contractor for wages of the employees of the farm labor contractor and if appropriate proof exists of liability for wages the commissioner shall pay the same or such part thereof as the commissioner has funds on deposit or cause the surety company to forthwith pay the entire liability or such part thereof as the sums due under the bond will permit.

"(3) Adopt appropriate rules to administer ORS 658.405 to 658.503 and 658.830."

The Commissioner of the Bureau of Labor and Industries of the State of Oregon has jurisdiction over the persons and subject matter herein.

2) At times material herein, ORS 658.410 provided, in part:

"(1) Except as provided by ORS 658.425, no person shall act as a farm labor contractor without a valid license in the person's possession issued to the person by the Commissioner of the Bureau of Labor and Industries. * * * "

At times material herein, OAR 839-15-125 provided:

"No person may perform the activities of a Farm or Forest Labor Contractor without first obtaining a temporary permit or license issued by the Bureau. No person may perform the activities of a Forest Labor Contractor or operate a farm-worker camp without first obtaining a special indorsement from the Bureau authorizing such performance. Unless otherwise specifically exempt, and except for cooperative corporations, no person may perform the duties of a farm or forest labor contractor or operate a farm-worker camp under a license issued to be corporation unless the person is also licensed to perform such duties."

Respondent employed workers and acted as a farm labor contractor for at least eight farmers in Oregon in 1993 and 1994 while not licensed to do so, constituting eight

violations of ORS 658.410 and OAR 839-15-125.

- 3) At times material herein, ORS 658.705(7) provided, in part:
"Farmworker camp' means any place * * * where sleeping places * * * or other housing is provided by a * * * farm labor contractor [or] employer * * * in connection with the * * * employment of workers to work in the production and harvesting of farm crops * * * ."

At times material herein, ORS 658.750 provided, in part:

"(1) Every farmworker camp operator shall register with the bureau each farmworker camp operated by the operator.

"(2) The bureau shall establish, by rule, procedures for annual registration of farmworker camps."

At times material herein, OAR 839-14-050 provided, in part:

"Farm-Worker camp operators must obtain a farm labor contractor's license pursuant to ORS 658.405 to 658.475 and the rules adopted thereunder, unless otherwise exempt pursuant to OAR 839-14-060. Additionally, farm-worker camp operators must obtain a special indorsement from the Bureau authorizing the operator to act as such."

At times material herein, OAR 839-14-065 provided in part:

"All farm-worker camps must be registered with the Bureau in accordance with these rules. Farm-worker camp operators who are otherwise exempt from obtaining the required indorsement, must, nevertheless register the farm-worker camp."

In 1994, by providing food and lodging to farmworkers in his employ in Oregon, Respondent operated a farmworker camp without registering same with the commissioner, constituting a violation of ORS 658.750(1) and OAR 839-14-065.

- 4) At times material herein, ORS 658.440 provided, in part:

"(1) Each person acting as a farm labor contractor shall:

" * * * * *

"(c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other things of value entrusted to the labor contractor by any person for that purpose."

At times material herein, ORS 652.145 provided, in part:

"[I]f an employee has worked for an employer as a seasonal farmworker, whenever the employment terminates, all wages earned and unpaid become due and payable immediately. * * * "

Respondent's failure in 1994 to promptly pay at least 24 workers all wages due constituted 24 violations of ORS 658.440(1)(c) and 652.145.

5) At times material herein, ORS 658.453 provided, in part:

"(1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

"(a) A farm labor contractor who, without the license required by ORS 658.405 to 658.503 and 658.830, * * * employs a worker.

" * * * * *

"(c) A farm labor contractor who fails to comply with ORS 658.440(1)* * *."

At times material herein, OAR 839-15-508 provided, in part:

"(1) Pursuant to ORS 658.453, the Commissioner may impose a civil penalty for violations of any of the following statutes:

"(a) Acting as a farm or forest labor contractor without a license in violation of ORS 658.410;

" * * * * *

"(e) Failing to pay or distribute when due any money or other valuables entrusted to the contractor in violation of ORS 658.440(1)(c)[.]"

At times material herein, ORS 658.850 provided, in part:

"(1) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$2,000 for each violation of any provision of ORS 658.715 to 658.850."

The Commissioner of the Bureau of Labor and Industries is authorized to impose civil penalties for violations of ORS 658.410, 658.440 and 658.750. The penalties imposed in the Order below are a proper exercise of that authority.

OPINION

Respondent was in default. As required by the Oregon Administrative Procedures Act⁵ and by previous rulings of this forum,⁶ the Agency presented a prima facie case establishing the elements of the violations charged. Respondent employed workers to perform labor for another in the production and harvesting of Christmas trees

while not licensed to do so in 1993 and 1994. In 1994, he failed to timely pay some of those workers. In 1994, he maintained a farmworker camp which was not registered with the commissioner. Respondent had prior knowledge of the requirements of Oregon law regarding farm labor contracting and farmworker camp operation. Respondent was clearly the principal in the enterprise, aided by his two sons. The forum finds no grounds upon which to mitigate or reduce the penalties sought by the Agency in the amended Notice of Intent.

ORDER

NOW, THEREFORE, as authorized by ORS 658.453, Respondent ODON SALINAS MORFIN, aka ODON SALINAS, is hereby ordered to deliver to the Bureau of Labor and Industries, Fiscal Services Office Suite 1010, 800 NE Oregon Street # 32, Portland, Oregon 97232-2109, a certified check payable to the Bureau of Labor and Industries in the amount of SIXTY FIVE THOUSAND DOLLARS (\$65,000), plus any interest thereon which accrues at the annual rate of nine percent, between a date ten days after the issuance of this Final Order and the date said Respondent complies herewith. This assessment is made as civil penalty against said Respondent as follows: for eight violations of ORS 658.410, \$15,000 (\$1,000 for the first violation, \$2,000 for each subsequent violation); for one violation of ORS 658.750(1), \$2,000; for 24 violations of ORS 658.440(1)(c), \$48,000 (\$2,000 per violation); total \$65,000.

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¹In this order, the term Respondent, singular, refers to Odon Salinas Morfin,

aka Odon Salinas.

²On August 12, 1996, Respondent's counsel, an Assistant Federal Public Defender for the District of Oregon, notified the forum that she was appointed to represent Respondent only in connection with federal criminal charges and was precluded from representing individuals outside the scope of her office. The last address she had for Respondent was Eluria Street.

³A copy of the executed Consent Order was received October 30, 1996.

⁴Wage claim or wage assignment information on the other four was incomplete.

⁵ORS 183.025 to 183.725, specifically ORS 183.415(5) and (6).

⁶*See In the Matter of John Cowdrey*, 5 BOLI 291, 298 (1986); *In the Matter of Art Farbee*, 5 BOLI 268, 276 (1986); *In the Matter of Judith Wilson*, 5 BOLI 219, 226 (1986); see also OAR 839-050-0330(2).