

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

— against —

Elsa Employment Agency Corp
88-14 Roosevelt Ave
Queens NY 11572

Respondent.
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CONSENT ORDER

Violation Number: LL 0052876411

License Number: 1181662

1. Respondent acknowledges that the New York City Department of Consumer Affairs (the "Department") duly served Respondent with a Notice of Hearing on 4-12-12 ("NOH") citing Respondent for a violation of the New York State General Business Law Section 170 et seq ("Employment Agency Law"), New York City Administrative Code ("Code") Section 20-101 et seq. (the "License Enforcement Law"), Code Section 20-700 et seq. (the "Consumer Protection Law"), and Title 6 of the Rules of the City of New York ("Rules").

2. Elsa Employment Agency Corp, license number 1181662 ("Respondent") consents to this final Consent Order (the "CO") to settle the above violation.

3. Elsa Palaguachi, as owner of Respondent, represents and certifies that [s/he] is duly authorized to settle this violation and to enter into this CO with the Department on behalf of Respondent.

4. This CO shall apply to Respondent and any other directors, officers, employees, agents, assignees, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent. For the purposes of this CO, "employee" means any person employed for hire or permitted to work by Respondent including, but not limited to, any person who manages or oversees the work of another, any person whose main activity is the selling of any goods or services for Respondent, and any person whose earnings are based in whole or in part on work performed for Respondent.

5. Respondent shall maintain a list identifying each employee by name, address, phone number and email address for three years. The list shall include the language each employee speaks.

13. Respondent shall not charge a job applicant a fee prior to job placement unless the applicant is referred to an employer to apply for a position as a domestic, household employee, unskilled or untrained manual workers and laborers (including agricultural workers), non-professional trained or skilled industrial workers, or mechanics. No other job applicants shall be charged a fee until job placement has occurred.

14. Respondent shall not charge a job applicant a registration fee.

15. Except as described in Section 185 of the GBL, Respondent shall not charge a job applicant a fee for any other goods or services including, but not limited to: (i) referring or promising to refer a job applicant to interviews or meetings with employers or prospective employers; (ii) training job applicants; or (iii) photographing job applicants.

16. In addition to the logs required by Section 179 of the GBL, Respondent shall maintain on its premises a separate log book, in the English language, of all requests for refunds. Respondent shall maintain such log book on its premises for three years. Respondent shall make such records available for inspection upon Department's demand. Each entry in the log book shall include all the following:

- a. the name of the job applicant requesting a refund;
- b. the date of such request;
- c. the fee originally paid by the job applicant;
- d. refunds paid;
- e. amount of refund paid;
- f. the date refund was paid;
- g. the reason for refund; and
- h. method refund paid, whether cash, check, or credit.

F. Job Orders

17. Respondent shall maintain on its premises a register, in the English language that includes all of the following:

- a. the name and address of every employer who pays a fee;
- b. the name and address of every employer to whom an applicant paying a fee is referred;
- c. the date each employer requested or assented to the furnishing of applicants;
- d. the kind of positions for which applicants are requested;
- e. the names of the applicants paying a fee who were sent to the employer, including a designation of the applicant hired;
- f. the amount of the fee charged; and
- g. the rate of wages or compensation agreed upon.

18. Respondent shall maintain on its premises a register, in the English language, of all fees, deposits and other money charged and/or collected. Each entry in the register shall

185 and 186 of the GBL; and (ii) the New York State Anti-Discrimination Poster Respondent. These posters are available at the Department's Licensing Center located at 42 Broadway, 5th Floor, New York, NY 10004.

23. Respondent shall display conspicuously in the reception or waiting area a sign in English and in every language in which Respondent advertises or conducts business with consumers in any way, that states the following:

NOTICE: It is against the law for an employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. If an agency charges you an improper fee, you are entitled to a refund. If you are not given a refund or you have a complaint or need more information call 3-1-1.

I. Advertisements

24. Respondent shall not publish, or cause to be published, any false, fraudulent or misleading information, representation, promise, notice or advertisement.

25. Respondent shall not advertise that it can "guarantee" jobs or placement.

26. Respondent shall not advertise that it is "no fee," unless it is an employer fee paid employment agency, as defined in Section 191 of the GBL.

27. Respondent shall include its Department issued license number and the word "agency" in all advertising.

28. Respondent shall maintain records of the dates and location of each advertisement that Respondent publishes, distributes or causes to be published or distributed for three years.

J. Compliance and Training

29. If the Department conducts a training in the future, an employee of Respondent with management responsibility shall attend the training, on a date and time set forth by the Department.

30. Respondent shall comply with Department instructions on submitting proof of attendance.

31. Respondent shall notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against you by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, the New York State Division of Human Rights, the New York City Commission on Human Rights, the New York State Workers' Compensation Board, the New York State Department of Labor, the Equal Employment Opportunity Commission, or

Respondent of all costs and expenses associated with the Department's investigation and prosecution of the new violation.

40. Non-payment or untimely payment of the settlement fine shall constitute a breach and violation of this CO.

41. Respondent shall incur a late fee of \$100 if Respondent does not pay the above fine by the date specified above, and the entire balance (including the late fee) due under this CO shall be due immediately.

42. If Respondent does not pay the above fine by the date specified above, the entire balance (including the late fee) will incur an interest rate of x% per day until time of payment.

43. Failure to utilize documents submitted to the Department as part of any license application or license renewal shall result in an additional fine of \$1,000.

44. Upon the termination of a license by revocation, expiration, denial, or surrender, Respondent shall immediately cease employment agency activities.

45. The acceptance of this CO by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

46. This matter will be considered settled upon execution of this CO and payment of the settlement sum as set forth above.

Accepted for Respondent
_____, by:

Kisa Palagachi
Print name

Owner
Title

Signature

4-12-12
Date

Accepted for Jonathan Mintz,
Commissioner of Consumer Affairs
for the City of New York by:

[Redacted]
Print name

Settlement officer
Title

[Redacted]
Signature

4-12-12
Date

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and

Exhibit A

Contract

Employment Agency Information

Name of Employment Agency _____

Telephone Number _____ License Number _____

Name of Agency Staff or Salesperson _____

Address _____

Job Applicant Information

Name of Job Applicant _____

Telephone Number _____

Address _____

Type of Work and Fees (Check only one and complete section.)

Agency can only charge a fee for job placement. This means the Agency can only charge you a fee after it gets you a job. Agency CANNOT charge a fee for:

- setting up interviews
- trainings
- reviewing resumes
- any services besides placing Applicant in a job
- photographs

Domestic/household work and unskilled/untrained manual work

(Classes A, A*, A**, A*** depending on whether Agency recruited Applicant in another state or country)

- Agency can charge a deposit or advance fee (unless Applicant is recruited from Hawaii, Alaska, another country).
- By law, Agency must refund the deposit or advance fee if Applicant is not placed in a job.
- If Applicant is placed in a job, advance fees or deposits must be credited to the Applicant's fee.

▪ Was an advance fee or deposit paid? Yes _____ No _____

▪ If Yes, amount of fee: \$ _____

Trained or skilled industrial workers or mechanics (non-professional) (Class A1)

Agency may charge a deposit or advance fee.

- Agency can charge a deposit or advance fee (unless Applicant is recruited from Hawaii, Alaska, another country).
- By law, Agency must refund the deposit or advance fee if Applicant is not placed in a job.
- If Applicant is placed in a job, advance fees or deposits must be credited to the Applicant's fee.

▪ Was an advance fee or deposit paid? Yes _____ No _____

▪ If Yes, amount of fee: \$ _____

Theatrical (e.g., actors, singers, models) (Class C)

By law, Agency cannot charge any deposit or advance fee.

Nursing (Class D)

By law, Agency cannot charge any deposit or advance fee.

All other work, including commercial, clerical, executive, administrative and professional employment and employment outside the continental United States (Class B)

By law, Agency cannot charge any deposit or advance fee.

NOTICE TO JOB APPLICANT -- READ BEFORE SIGNING

Do not sign this contract before you have read it or if any spaces are left blank. The employment agency must give you a signed copy of this contract at the time you sign it.

IMPORTANT: It is against the law for the employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. YOU ARE ENTITLED TO A REFUND. IF A REFUND IS NOT MADE WITHIN SEVEN (7) DAYS OR YOU HAVE A COMPLAINT OR NEED MORE INFORMATION, CALL 3-1-1.

Applicant's Signature

Date

Employment Agency Representative's Signature

Date

to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than ten weeks, the gross fee shall not exceed ten per cent of the wages or salary actually received.

7. FEE CEILING: For a placement in Class "B" employment the gross fee shall not exceed, in percentage of the first full month's salary or wages, the following:

Where such first full month's salary or wages is

- Less than \$ 750 25%
- At least \$ 750 but less than \$ 950 35%
- At least \$ 950 but less than \$ 1150 40%
- At least \$ 1150 but less than \$ 1350 45%
- At least \$ 1350 but less than \$ 1500 50%
- At least \$ 1500 but less than \$ 1650 55%
- At least \$ 1650 or more . 60%

Provided however, that where the placement is for employment in which the applicant will be paid on a straight commission basis or on the basis of a drawing account plus commissions, the gross fee shall be based on percentages in the above schedule applied to an amount equivalent to one-twelfth of the estimated first year's earnings, as estimated by the employer.

Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than four months the gross fee shall not exceed fifty percent of the fee prescribed in the schedule in this subdivision or ten percent of the wages or salary actually received, whichever is less.

8. FEE CEILING: For a placement in class "C" employment the gross

fee shall not exceed, for a single engagement, ten per cent of the compensation payable to the applicant, except that for employment or engagements for orchestras and for employment or engagements in the opera and concert fields such fees shall not exceed twenty per cent of the compensation.

9. FEE CEILING: For a placement in class "D" employment the gross fee shall not exceed, for a single engagement, the following:

(1) FOR PRIVATE NURSING DUTY, five per cent of the salary or wages received each week through the first ten weeks of that engagement only, and such fee shall be due and payable at the end of each such week:

(2) FOR ANY OTHER NURSING DUTY, the amount of the first week's salary or wages unless the first year's computed salary or wages to be derived for at least one year's employment is twenty-five hundred dollars or more, in which event the gross fee shall not exceed, in percentage of such salary or wages, the following:

Where such first year's salary or wages is

- At least \$ 2500 but less than \$ 3000 2 1/2%
- At least \$ 3000 but less than \$ 3500 3%
- At least \$ 3500 but less than \$ 4000 3 1/2%
- At least \$ 4000 but less than \$ 4500 4%
- At least \$ 4500 but less than \$ 5000 4 1/2%
- \$5000 or more 5%

§ 186. RETURN OF FEES

1. EXCESSIVE FEE: Any employment agency which collects, receives or retains a fee or other payment contrary to or in excess of the provisions of this article, shall return the fee or the excess portion thereof within

seven days after receiving a demand therefor.

2. FAILURE TO REPORT: If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed twenty-five per cent of the maximum fee allowed by section one hundred eighty-five of this article, provided however, if the applicant remains with his same employer, the fee shall not exceed fifty per cent. If a job applicant accepts employment and fails to report for work, no fee shall be charged to the employer.

3. TERMINATION WITHOUT EMPLOYEE'S FAULT. If a job applicant accepts employment and reports for work, and thereafter such employment is terminated without fault of the employee, the gross fee charged to such employee and to the employer each shall not exceed ten percent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article. However, if such employee is a domestic or household employee recruited from a state outside of this state the fee of the employer shall not exceed thirty-three and one-third percent of the wages or salary actually earned.

4. TERMINATION UNDER ALL OTHER CIRCUMSTANCES: If a job applicant accepts employment and reports for work, and thereafter such employment is terminated under any other circumstances, the gross fee charged to such employee and the employer each shall not exceed fifty per cent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article.

For more information or to file a complaint, call 3-1-1 or visit us at www.nyc.gov/consumers

Receipt

Employment Agency Information (to be completed by Employment Agency)		
Name of Employment Agency _____		
Telephone Number _____ License Number _____		
Name of Agency Staff or Salesperson _____		
Address _____ _____		
Name of Applicant:		Date:
Name of Employer (if known):		
Address of Employer:		Telephone:
E-mail Address, if available:		
Job Title:	Salary:	Employment Class:
Amount of Fee:		
Purpose of Fee:		
It is against the law for the employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. YOU ARE ENTITLED TO A REFUND. IF A REFUND IS NOT MADE WITHIN SEVEN (7) DAYS OR YOU HAVE A COMPLAINT OR NEED MORE INFORMATION, CALL 3-1-1.		

Applicant's Signature

Date

I confirm that any and all fees the Employment Agency requires Applicant to pay are consistent with the law.

Employment Agency Representative's Signature

Date