

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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CONSENT JUDGMENT/ORDER

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

Violation Number: PL 1065723

– against –

WILSON LIMA
d/b/a SALINAS EMPLOYMENT AGENCY

Respondent.

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Wilson Lima, (“Respondent” or “Employment Agency”) hereby consents to the terms of this Consent Judgment and Order (“CJO”) with the New York City Department of Consumer Affairs (“DCA” or “the Department”) to settle the above captioned violation.

1. Respondent was duly served with the instant citation, dated February 3, 2010, which gave notice that Respondent was operating an unlicensed employment agency in violation of New York City Administrative Code Sections 20-101 et seq. (the “License Enforcement Law”), New York State General Business Law (“GBL”) Section 170 et seq. (“Article 11”), New York City Administrative Code Sections 20-700 et seq. (the “Consumer Protection Law”), and/or Title 6 of the Rules of the City of New York (“Rules”).
2. The citation stated that the Department would conduct a hearing on this matter on March 11, 2010.
3. Wilson Lima, Owner, has appeared for Respondent, and is authorized to enter into this CJO on behalf of the Respondent.
4. Respondent agrees to immediately cease unlicensed activity.
5. Respondent agrees to obtain an employment agency license and an employment agency manager license as required by Sections 172 and 173 of the General Business Law.
6. Respondent shall comply fully with the License Enforcement Law, GBL Article 11, the Consumer Protection Law, and the Rules.

A. Definitions

7. For the purposes of this CJO, the following definitions apply:

- a. “Clear and conspicuous” and “clearly and conspicuously” mean that the statement, representation, or term is so presented as to be easily readable, readily apparent, and understood by the audience to whom it is addressed. Factors to be considered for this purpose include, but are not limited to, clarity of language, relative type size, font, color contrast, location within an advertisement or other documents, and proximity to the statement or representation to which it applies.
- b. “Job applicant” means a person who is seeking employment placement by Respondent, whether permanent or temporary.
- c. “Landlord” means any person or entity to whom Respondent pays rent or other consideration to lease premises for the operation of an employment agency.

B. Documents Generally

8. Respondent shall state clearly and conspicuously the name, address, telephone number, and license number of the Employment Agency on every document, form, or publication it provides to the job applicant or requires the job applicant to complete including, but not limited to, any application, contract, or receipt used by the Employment Agency.
9. Respondent shall issue all documents and forms including, but not limited to, applications, contracts and receipts, in English, Spanish, and/or in every language in which Respondent advertises and/or interacts with job applicants over the telephone, via email, and/or in person.

C. Applications

10. Respondent shall not request information from any job applicant that is unrelated to the performance of the job he or she is seeking and/or is forbidden by New York City Administrative Code Section 8-101 et seq. (the “New York City Human Rights Law”).
11. Respondent shall state clearly and conspicuously at the top of the application form or above the signature line, if any, in fourteen (14) point bold, non-compressed type face:

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.

D. Contracts

12. Respondent shall provide every job applicant with a written contract that complies with GBL Section 181, GBL Section 185, and is substantially similar to the DCA “Model Contract” available on the Department’s website at <http://www.nyc.gov/html/dca/html/licc>

[nces/034.shtml](http://www.nyc.gov/html/dca/html/licenses/034.shtml).

13. The contract shall be an individual document that is separate from any other document given to a job applicant.
14. Respondent shall place directly above the space reserved in the contract for the signature of the job applicant, in at least 14-point bold, uncompressed face type or larger, a notice stating:

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.

E. Receipts

15. Respondent shall provide job applicants with a written receipt for every deposit, fee or other charge it collects. The receipt shall comply with GBL Section 181 and shall be substantially similar to the DCA "Model Receipt" available on the Department's website at <http://www.nyc.gov/html/dca/html/licenses/034.shtml>.
16. The receipt shall be an individual document that is separate from any other document given to a job applicant.
17. Respondent shall state clearly and conspicuously on the receipt, in at least, 14-point bold, uncompressed face type or larger:

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.

F. Statement of Employee Rights Regarding Employment Agencies

18. Respondent shall give to job applicants who are seeking positions as domestic workers or household workers and all prospective employers, free of charge, a legible copy of the DCA's "Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities" prior to any discussion with the job applicant. DCA's "Domestic or

Household Employees: Statement of Employee Rights and Employer Responsibilities” is available on the Department’s website at <http://www.nyc.gov/html/dca/html/licenses/034.shtml>.

19. Respondent shall keep on file in its principal place of business for a period of three (3) years a statement, signed by the job applicant and the employer of a domestic or household employee whom the Employment Agency placed with such employer, indicating that the employer has read and understands the DCA “Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities.”

G. The Minimum Wage Act

20. Respondent shall not send job applicants to employers it knows, or should have known, to be in violation of the New York State Labor Law Article 19 “The Minimum Wage Act.”

H. Limitation on Fees

21. Respondent shall not collect registration or application fees from any job applicant.
22. Respondent shall collect an advance fee or deposit only from job applicants who are seeking positions as domestic workers, household workers, manual workers, agricultural workers, skilled industrial workers, or mechanics, as defined by GBL Section 185.
23. Respondent shall credit any advance fee or deposit to the job applicant’s total fee or payment.
24. Respondent shall not charge job applicants a fee that exceeds the maximum limits set forth by GBL Section 185.

I. Refunds

25. Respondent shall make any refund required under the GBL Section 186 to a job applicant within seven (7) days after a job applicant requests a refund, regardless of whether the job applicant requests the refund orally or in writing.

J. Signage

26. Respondent shall display conspicuously in the main room of its place of business, a poster provided by the Department (“DCA poster”) containing GBL Section 185 and GBL Section 186 and consumer tips in place of the law card required by GBL Section 188. The Department shall provide the DCA poster to Respondent upon its obtaining an employment agency license.
27. Respondent shall display conspicuously in the main room of its place of business the Licensing poster as required by Section 1-03 of the Rules.

K. Other Terms and Conditions

28. Within one week of executing this CJO, Respondent shall provide to the Department, in writing, its landlord's full name (including first and last name), current address, current telephone number, current fax number (if any), and current email address (if any).
29. Respondent shall provide the information demanded in paragraph 28 to the Research and Investigations Division, NYC Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, New York 10004.
30. Beginning the week containing June 1, 2010, Respondent shall, on a daily basis, for a period of 30 days, advertise in the classified section of *El Diario* the following statement in Spanish: "You may be entitled to a refund from Salinas Employment Agency. Please call 3-1-1 or visit www.nyc.gov/consumers."
31. Respondent shall provide to the Department no later than March 31, 2010, a list of every publication in which it has advertised employment agency services since August 9, 2010. If the information requested in this paragraph is incomplete or false, Respondent shall be in material breach of the CJO and subject to maximum penalties.

L. Records Disposal – Privacy Concerns

32. Respondent shall dispose of records containing personal identifying information such as social security numbers, driver's license numbers, non-driver identification card numbers, mother's maiden name, financial services account numbers or codes, savings account numbers or codes, checking account numbers or codes, debit card numbers or codes, automated teller machine numbers or codes, electronic serial numbers, and/or personal identification numbers by:
 - a. Shredding the records before disposal;
 - b. Destroying the personal identifying information contained in the record; and/or
 - c. Modifying the record to make the personal identifying information unreadable.
33. Respondent shall immediately notify the Department, the job applicant and the police of any breach of security or unauthorized possession of personal identifying information that compromises the security, confidentiality, or integrity of such information.
34. Respondent shall shorten (truncate) the account information on electronically printed credit and debit card receipts given to job applicants. Respondent shall not include more than the last five digits of the credit card number and shall delete the card's expiration date.
35. Nothing in this CJO shall be construed as waiving or abrogating Respondent's responsibilities under federal, state or local law concerning record-keeping or record maintenance.

M. Restitution

36. Respondent shall tender payments to the Department \$2,500.00 made payable to “NYC Department of Consumer Affairs” as per paragraph 48, as restitution for consumers aggrieved by Respondent’s violations of the License Enforcement Law, the Consumer Protection Law, GBL Article 11, and/or the Rules.
37. The Department shall be the sole and final arbiter of the validity of job applicants’ claims for restitution and the amount of any restitution to be paid to job applicants.
38. If the restitution amount in paragraph 36 is insufficient to provide complete restitution to all consumers due restitution, Respondent shall provide all restitution amounts due, as determined by the Department, within 14 days of written notice from the Department of the amount of the insufficiency.
39. Any restitution remaining shall revert to fines payable to the Department one year after execution of this CJO.

N. Fines and Consequences of Breach of Assurance

40. Respondent shall tender payments to the Department a fine of \$750.00 as per paragraph 48, for unlicensed activity and violations of the License Enforcement Law, GBL Article 11, the Consumer Protections Law, and/or the Rules no later than March 17, 2010.
41. Respondent acknowledges that any material breach of a provision of this CJO by Respondent or its agents shall, if proven: (i) be deemed grounds for automatic revocation of Respondent’s license; (ii) be assessed at the maximum penalties allowed by law as knowing violations of the law pursuant to the License Enforcement Law, GBL Article 11, the Consumer Protection Law, and the Rules; (iii) be deemed a separate, knowing violation of the Consumer Protection Law; and (iv) be deemed proof that any person with an equity interest of 10 percent or more, or significant managerial responsibility for the operation of Respondent’s business, is not possessed of the integrity, honesty, and fair dealing required of persons who hold a license issued by the Department.
42. If Respondent does not immediately cease its illegal unlicensed activity, the Department, without any further notice to the Respondent, shall be entitled to impose fines of up to \$100 per day for each day of unlicensed activity, and to seal said premises, and/or remove, seal or otherwise make inoperable items or goods sold, offered for sale, available for public use or utilized in the operation of the unlicensed activity. It is hereby agreed that there shall be a presumption of continuous unlicensed activity from the date of the execution of this Consent Judgment/Order for the purpose of imposing fines.
43. Respondent hereby agrees to waive any further right to a hearing and appeal on the above citation under Section 20–104 of the New York City Administrative Code, and stipulates that, by signing this CJO, it has been duly served with a padlock posting order pursuant to Section 20–105 of the New York City Administrative Code, thereby waiving any further

service of a notice or an order.

44. The Department agrees that by executing this CJO, the Department waives the right to bring charges against Respondent for any violations of the Licensing Law, GBL Article 11, the Consumer Protection Law, and/or the Rules as cited in the above captioned violation.
45. This agreement does not resolve any consumer complaints filed against Respondent.
46. If Respondent files a license application and it is denied, the Department will have the authority to proceed as indicated above.
47. If Respondent obtains, or at the time of this CJO has already obtained a license for an employment agency and if payment is not made in accordance with the above paragraphs, the Respondent understands that its license will be revoked.
48. Payment of fines and restitution shall be made as follows:
 - Respondent shall pay \$250 as fines upon execution of this CJO.
 - On April 12, 2010, Respondent shall pay \$500 for fines as per paragraph 40, and \$1,000 for restitution as per paragraph 36.
 - On May 10, 2010, Respondent shall pay \$1,500 for restitution.

Agreed to for Respondent
Wilson Lima d/b/a Salinas Employment Agency
by:

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

Wilson Lima 3-10-10
Wilson Lima Date

 3/15/10
Settlement Officer Date
Research & Investigations Division

Please remit payment and a signed copy of this CJO to:

The New York City Department of Consumer Affairs
Research and Investigations Division
42 Broadway, 9th Floor, New York, New York 10004

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 consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.