



Issue Date: 01 October 2019

Case Number: 2018-FLS-00011

In the Matter of:

**MIKE OSBOURN LAWN CARE, INC.
and MICHAEL T. OSBOURN,**
Respondents.

ORDER APPROVING CONSENT FINDINGS

This case arises under the Fair Labor Standards Act (“FLSA”) of 1938, 29 U.S.C. § 201-219, and the implementing regulations at 29 C.F.R. Parts 578-580.¹ On June 26, 2018, the Office of Administrative Law Judges (“Office”) docketed this matter when counsel for the Administrator, Wage and Hour Division, U.S. Department of Labor (“Complainant”) filed an *Order of Reference*.

On July 2, 2018, I issued a *Notice of Docketing* instructing the parties to exchange and submit certain prehearing information. On August 7, 2018, I issued an *Order Holding Case in Abeyance* in light of a lawsuit pending before the U.S. District Court for the Western District of Kentucky in which the Secretary of Labor sought back wages and liquidated damages involving some of the same violations at issue in the above-captioned matter.² On August 13, 2019, Plaintiff provided a status report to this Office, with a copy of the final order in the district court case.³ On September 12, 2019, Plaintiff filed *Consent Findings* for my approval.

The *Consent Findings* state that, consistent with the district court order, the Administrator amends the assessed civil money penalty to \$23,932.45 and Respondents withdraw their previously-filed exception. The *Consent Findings* further state that Respondents agree to pay the amended civil penalties in full settlement of these proceedings in four installments, with the first payment of \$5983.00 due on or before October 1, 2021, the second payment of \$5983 due on or before January 1, 2022, the third payment

¹ The Wage and Hour Division in Louisville, Kentucky conducted an investigation of the above-named Respondents for the time period from October 26, 2013 to October 25, 2016. Complainant determined that Respondents failed to pay employees the applicable minimum wage under Section 6 of the FLSA and statutory overtime pay under Section 7, resulting in underpayments of \$42,260.10 due to 69 employees. By notice dated December 28, 2016, Complainant assessed a civil money penalty of \$65,509.50. Respondents notified Complainant of their objections by letter dated January 11, 2017.

² Case number 3:17-cv-00528-DJH.

³ Plaintiff attached a copy of the *Consent Order and Permanent Injunction* in the matter before the Western District of Kentucky in which Michael Osborn Lawn Care, Inc. and Michael T. Osborn agreed to pay \$38,034.12 in back wages, \$38,034.12 in liquidated damages and a 23,923.45 civil money penalty.

of \$5983 due on or before April 1, 2022 and the final payment of \$5983.45 due on or before July 1, 2022. The agreement is signed by counsel for Respondents and counsel for Plaintiff.

The FLSA rules of procedure for administrative proceedings are set forth in 29 C.F.R. Part 580. Section 580.7(a) states that the OALJ Rules of Practice and Procedure found at 29 C.F.R. Part 18 shall apply to the extent that they do not conflict with the provisions of Part 580. As Part 580 does not provide applicable standards for approving a settlement agreement and consent findings, the applicable standards are found in 29 C.F.R. § 18.71.

After reviewing the terms of the agreement, I am satisfied that they conform to the requirements set forth in § 18.71(b)(1)-(4) and are a satisfactory resolution of the issues previously contested. Accordingly, the Consent Findings are APPROVED and adopted and incorporated in full into this order. This matter is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge