

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: MARIVEL BRUNETTI and AGRI
AIDE, INC.

Citation and Notice of Assessment No.
FLC-003-17

OAH Docket No. 12-2017-LI-00649

No. 2018-025-FLC

DIRECTOR'S ORDER

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order on Summary Judgment Motion served on July 10, 2018, having considered the petition for review filed by Marivel Brunetti and Agri Aide, Inc. (the Appellant), briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on Summary Judgment on July 10, 2018.
2. On August 9, 2018, the Appellant timely filed a petition for review with the Director.

3. The Director adopts and incorporates all the Initial Order on Summary Judgment's "Issues" statement, "Order Summary" section, "Summary Judgment Motion Hearing" section, and "Facts for Purpose of Summary Judgment."

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter.

2. The Director incorporates all the Initial Order on Summary Judgment's conclusions of law and "initial order" section.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment No. FLC-003-17 is affirmed. The Initial Order of July 10, 2018, is incorporated by reference herein.

1. Payment of Civil Penalty: The Appellant is ordered to pay the Department a penalty in the amount of \$97,000.

DATED at Tumwater, Washington this 26 day of October 2018.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing, or by emailing to DirectorAppeal@LNI.WA.GOV, or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 26 day of October 2018, via U.S. Mail, postage prepaid, to the following:

Marivel Brunetti
Agri Aide, Inc.
838 Garza Road
Othello, WA 99344

Kevin Elliott, AAG
Office of the Attorney General
1116 W. Riverside Avenue
Spokane, WA 99201

Marivel Brunetti
Agri Aide, Inc.
PO Box 640
Moses Lake, WA 98837

DATED this 26 day of October 2018, at Tumwater, Washington.

Lisa Deck

Lisa Deck

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Marivel Brunetti and
Agri Aide, Inc.,

Appellant.

Docket No. 12-2017-LI-00649

**INITIAL ORDER
ON SUMMARY JUDGMENT MOTION**

Agency: Department of Labor and Industries
Program: Farm Labor Contractor
Agency No. FLC-003-17

For translation of this document, please call OAH, 253-476-6888.

**Para la traducción de este documento,
por favor llame a la OAH, 253-476-6888.**

1. ISSUES

1.1. What penalty is proper on admitted violation of RCW 19.30.110(7)?

2. ORDER SUMMARY

2.1. The Department of Labor and Industries Motion for Summary Judgment is **GRANTED**.

2.2. The Notice of Violation issued September 6, 2017 is **AFFIRMED**; Appellants failed to provide the work condition form required by RCW 19.30.110(7) to 97 workers.

2.3. The penalty assessed is **MODIFIED**. Appellants shall pay a penalty of \$1,000.00 per violation, for a total of \$97,000.00.

3. SUMMARY JUDGMENT MOTION HEARING

3.1. Hearing Date: June 25, 2018

3.2. Administrative Law Judge: Debra Pierce

3.3. Appellant: Appellants and Agri Aide, Inc.

3.4. Agency: Department of Labor and Industries

3.4.1. Representative: Kevin Elliott

3.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date
1	Department of Labor and Industries Notice	9/6/2017

2	Request for Hearing	9/27/2017
3	Department of Labor and Industries Motion for Summary Judgment	5/3/2018
4	Declaration of Rodrigo Ramon in Support of Department of Labor and Industries Motion for Summary Judgment with Attachments	5/3/2018
5	Appellants Response to Department of Labor and Industries Motion for Summary Judgment	6/7/2018

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish “no genuine issue as to any material fact”.¹ “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.”² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party’s version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. So, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

4.1. Department of Labor and Industries issued a Notice of Violation in this matter on September 6, 2017.

The Statement of Charges Notice of Infraction alleged that Appellants Marivel Brunetti and Agri Aide, Inc. violated RCW 19.30.020 by acting as a farm labor contractor without a current license to do so, violated RCW 19.30.110(1) by failing to carry and disclose to farmers a current and valid farm labor contractor license, and violated RCW 19.30.110(7) by failing to provide a written statement of working conditions to workers. Based on these allegations, the Notice of Violation imposes a sanction of \$105,000.00.

4.2. Appellant requested a hearing on October 5, 2017.

¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep’t*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc’y v. Dep’t of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

Summary Judgment

- 4.3. Department of Labor and Industries filed a Motion for Summary Judgment on May 7, 2018.
- 4.4. Appellants filed a response on June 11, 2018. Ms. Brunetti contests only the penalties imposed for violation of RCW 19.30.110(7).
- 4.5. Appellants stipulate they committed the violations alleged in the Notice of Violation. Generally, they admit Agri Aide, Inc., violated RCW 19.30.020 by acting as a farm labor contractor without a current license to do so, violated RCW 19.30.110(1) by failing to carry and disclose to farmers a current and valid farm labor contractor license, and violated RCW 19.30.110(7) by failing to furnish to each worker a written statement disclosing work conditions.

Undisputed facts

- 4.6. The Department investigated a complaint that Agri Aide, Inc. acted as a farm labor contractor to an agricultural business without a license to do so.
- 4.7. When Department agents contacted Marivel Brunetti, she claimed Agri Aide, Inc. was not performing any farm labor contractor activities.
- 4.8. Confronted with evidence that Agri Aide, Inc. paid farm laborers for work performed for a third party and the invoices for that labor, Ms. Brunetti claimed she paid these workers as a favor to her son, whose business, Agri Labor Source, did not yet have payroll checks. This was untrue.
- 4.9. Agri Aide, Inc. now admits it employed 97 workers. It acted as a farm labor contractor without a license to do so. It failed to carry a current valid farm labor contractor license and disclose the license to farmers. It failed to furnish each worker a written statement disclosing work conditions.
- 4.10. Agri Aide, Inc. violated RCW 19.30.020 in 2013; it was also cited for acting as an unlicensed farm labor contractor in 2012.
- 4.11. Agri Aide, Inc. violated RCW 19.30.020, RCW 19.30.110(1) and 19.30.110(7) in 2015. These are the same violations charged in the current (fourth) Notice and now admitted by Appellant.
- 4.12. The Department reduced Appellant's penalty for violation of RCW 19.30.110(7) in 2015. The Department reduced the penalty from \$1,000.00 per violation (for forty-three separate violations, or \$43,000.00) to the penalty for a single violation.
- 4.13. In 2015, the Department informed Agri Aide, Inc. that penalties would not be reduced if additional violations occurred.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

5.1. I have jurisdiction over the persons and subject matter in this matter under chapter 19.30 RCW and chapter 34.05 RCW.

Standards for Summary Judgment

5.2. RCW 34.05.437 and WAC 10-85-135 as well as the Prehearing Conference in this matter, allow for the filing of dispositive motions in administrative review, including motions for summary judgment. Summary judgment is a procedural device designed to avoid the time and expense of a trial when no trial is necessary. *See Hudesman v. Foley*, 73 Wn.2d 880, 441 P.2d 532 (1968); *Karl B. Tegland*, 4 Wash. Prac., Rules Practice CR 56.

5.3. Washington Court Rule 56(c) and WAC 10-08-135 provide that “a motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

5.4. In making this determination the Court will consider any evidence and inferences therefrom in a light most favorable to the non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one upon which the outcome of the litigation depends. *Hudesman*, 73 Wn.2d at 886.

5.5. The party moving for summary judgment has the burden of showing the absence of any issue of material fact. *Id.*, at 887. Once the moving party meets its burden, the non-moving party may not rest on mere allegations, argumentative assertions, speculation, or denials. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Summary judgment motions are important to the process resolving disputes. *Id.* Summary judgment should be granted if reasonable minds could reach only one conclusion based on the facts in evidence.

No genuine issue of material fact

5.6. The violation alleged was committed. Appellants admitted they failed to furnish the work condition form required by RCW 19.30.110(7) to 97 workers.

5.7. This is Appellants' fourth citation for violation of the Farm Labor Contractor's Act ("FLCA"), RCW 19.30, and the second for violation of RCW 19.30.110(7). The Department warned Appellants that future assessed penalties would not be

mitigated. Appellant Brunetti was dishonest responding to the investigation. None of these facts is disputed⁴.

Penalties authorized

5.8. RCW 19.30.160 authorizes assessment of a penalty up to \$1,000.00 per violation of any provision of the FLCA. The assessment of penalties is discretionary, up to the maximum provided.

5.9. Because Appellants admit they committed 97 violations of RCW 19.30.110(7), RCW 19.30.160 authorizes assessment of a penalty of \$97,000.00 (\$1,000.00 per violation).

5.10. Appellants provide no facts to establish that assessment of the maximum penalty of \$1,000.00 per violation was an abuse of discretion. Appellants do not argue the Department abused its discretion in assessing the penalty, but instead, that the penalty is not merited. The penalty is merited because the violation occurred. The facts establish the penalty is not manifestly unreasonable (the numerous violations, the dishonesty in investigation, warning and prior mitigation of penalties). See *Hadley v. Department of Labor and Indus.*, 116 Wn.2d 897, 905, 810 P.2d 500 (1991); *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

5.11. Appellants violated RCW 19.30.110(7) as to each of their 97 employees. A penalty of \$1,000.00 per violation, for a total of \$97,000.00 is authorized by RCW 19.30.160.

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⁴ The motor vehicle crash involving Agri Aide, Inc.'s employees and resulting in the death of three is not considered; the consequences of failure to provide the required notice in writing in violation of RCW 19.30.110(7) is irrelevant, and the connection between the violation and the crash is not established here. Appellants' fair treatment of employees and compliance with other laws and regulations is likewise irrelevant.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Department of Labor and Industries Motion for Summary Judgment is GRANTED.

6.2. The Notice of Violation issued September 6, 2017 is AFFIRMED; Appellants failed to provide the work condition form required by RCW 19.30.110(7) to 97 workers.

6.3. The penalty assessed is MODIFIED. Appellants shall pay a penalty of \$1,000.00 per violation, for a total of \$97,000.00.

SIGNED at Tacoma, Washington on the date of mailing.



Debra Pierce
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS ATTACHED

APPEAL RIGHTS
PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.⁵ You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Administrative Review to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.⁶

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

⁵ RCW 49.48.084 and RCW 34.05.464.

⁶ RCW 49.48.084 and Chapter 34.05 RCW.

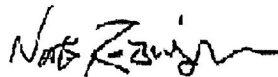
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2017-LI-00649

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

Marivel Brunetti Agri Aide, Inc. 838 Garza Rd Othello, WA 99344 Appellant	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Marivel Brunetti Agri Aide, Inc. PO Box 640 Moses Lake, WA 98837 Appellant	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Kevin Elliott, AAG Office of the Attorney General 1116 W Riverside Ave Spokane, WA 99201 Agency Representative	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Date: Tuesday, July 10, 2018

OFFICE OF ADMINISTRATIVE HEARINGS



Nathan Robinson
Legal Assistant 3