



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 Speer Boulevard, Room 250
Denver, Colorado 80204-3582

SECRETARY OF LABOR,

Complainant,

v.

SAIPAN KOREANA HOTEL,
and its successors,

Respondent.

OSHRC DOCKET NO. 02-2129

DECISION AND ORDER ON REMAND

As noted by the Commission in its order dated February 2, 2006, the Secretary of Labor formally withdrew her substantial justification objection to Respondent's fee application in this matter filed pursuant to the Equal Access to Justice Act (EAJA, 5 U.S.C. 8504). The withdrawal was communicated to the Commission and Respondent by letter dated July 15, 2005. By letter dated October 27, 2006, Respondent submitted a schedule of expenses and fees incurred, with supporting documentation, during the period December 2, 2002 to October 15, 2005, as follows:

\$ 4,935.48 expenses
\$19,537.50 attorney fees at \$125 per hour

Throughout this litigation Respondent has vigorously pursued reasonable defenses to Complainant's allegations; in particular, the defense that the Secretary of Labor did not possess jurisdiction over Respondent's worksite and Respondent's reasonable position that it had a right to receive a determination of that issue in this litigation notwithstanding Complainant's motion to dismiss the citation. Thus, the fees and expenses incurred by Respondent, as set forth above, are reasonable. Moreover, Complainant's tenacious refusal to acknowledge at an earlier date that she was not substantially justified in bringing this action in the first instance, unreasonably protracted this litigation causing Respondent to incur additional fees and expenses.

Accordingly, since Respondent has been found to be an eligible prevailing party and the Secretary now concedes that she was not substantially justified in pursuing this matter against Repondent, Complainant is directed to pay \$24,472.98 to Respondent pursuant to the EAJA Act.

SO ORDERED.

/s/

Robert A. Yetman
Judge, OSHRC

Dated: December 19, 2006