Dep't of Consumer & Worker Protection v. Golden Rose Employment Agency

OATH Index No. 2231/25 (June 15, 2026)

Petitioner proved that an employment agency collected advance fees from job applicants on 678 occasions, issued receipts that failed to include mandatory disclaimer language, and failed to issue a refund upon demand to one job applicant. Petitioner failed to prove that the employment agency did not provide 20 job applicants with a statement of employee rights and employer responsibilities, or a statement of job conditions. Petitioner also failed to prove that employment agency published at least two advertisements that did not include its DCWP license number. ALJ recommends civil penalties of $865,200, and restitution of $31,857.50.

New York City Office of Administrative Trials and Hearings

In the Matter of

Department of Consumer and Worker Protection

Petitioner

-against-

Golden Rose Employment Agency

Respondent

Report and Recommendation

Tiffany Hamilton, *Administrative Law Judge*

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Introduction

Petitioner, the New York City Department of Consumer and Worker Protection ("DCWP" or "petitioner") filed this action against respondent, Golden Rose Employment Agency ("Golden Rose"), alleging violations of Article 11 of the New York General Business Law ("GBL") and Section 20 of the New York City Administrative Code ("Administrative Code"). Specifically, petitioner alleges that respondent: 1) illegally charged advance fees to consumers on 678 occasions; 2) failed to return advance fees to three consumers upon request; 3) issued receipts to 678 consumers that did not include mandatory disclaimer language; 4) failed to provide at least 20 consumers with a statement of employee rights and employer obligations; 5) failed to provide at least 20 consumers with a statement of job conditions; and 6) published advertisements that did not include its DCWP license number (ALJ Ex. 1). Respondent admitted to some of the charges.

Trial was held before me via videoconference on October 23, 2025. Petitioner and respondent each relied on the testimony of one witness, as well as documentary evidence. Following the submission of post-trial briefs, the record was closed on February 27, 2026.

For the reasons discussed below, I find that petitioner proved most of the charges, resulting in civil penalties totaling $865,200. In addition, I recommend the creation of a restitution fund in the amount of $31,857.50, to compensate job seekers who were charged advance fees.

Background

Golden Rose Employment Agency, Inc. is a domestic business corporation that was licensed to operate as an employment agency in New York City under DCWP license number 20932912-DCA, until its license expired on May 1, 2026 (ALJ Ex. 1). At all relevant times, Golden Rose was managed, controlled, and owned by Mirka Hermoza Laznik (*Id.*, Tr. 81).[1]

Ms. Laznik started Golden Rose in 2016 and was responsible for keeping "everything in order," which involved a regular review of the business's license and checklists (Tr. 54, 82). She

[1] Although the petition refers to Golden Rose's owner as "Mirka Schultz," the owner clarified at trial that Schultz is her "ex-husband's name" and she prefers to be called Mirka Hermoza Laznik (Tr. 54).

and her staff also interviewed job seekers and placed them in suitable positions (Tr. 82). Ms. Laznik described the business as "a bridge to help people to find a job and then be able to stand on their feet and work" (Tr. 75).

Ms. Laznik testified about the circumstances that led her to start an employment agency, and submitted a written personal statement (Resp. Ex. I). Originally from Peru and of Jewish ancestry, Ms. Laznik moved to New York and married a man whom she described as "ultra, ultra, ultra orthodox" (Tr. 56; Resp. Ex. I). According to Ms. Laznik, her husband was physically abusive toward her, and she found herself "trapped in a marriage that isolated and controlled [her], in a world where [she] didn't speak the language and had no family or support network" (Resp. Ex. I; Tr. 65). Eventually she sought help from a domestic violence clinic, which led to a divorce and custody battle (Tr. 54-55, 57, 66).

After Ms. Laznik's divorce was finalized in 2016, she was "on [her] own" in New York (Tr. 55-56). Now an "ex-Hasidic," she was "stuck in the community where [she] used to live," with "no capital, no mentors, [and] no formal training" (Tr. 56, 62; Resp. Ex. I). An employment agency in the neighborhood had gone out of business, and as "the only person that spoke Spanish back then in that community," she informally began translating and helping women find jobs (Tr. 62). An acquaintance suggested that she turn her efforts into a legal business, and "[w]hat began as helping a few women find domestic work turned into a mission. Women—many immigrants, many Spanish-speaking, many in desperate situations—came to [her] door, and [she] helped however [she] could. Eventually, that effort became a business" (Resp Ex. I; Tr. 62-63). Ms. Laznik "just want[ed] people to be able to work, to stand up on their feet, and to be able to provide for their families" (Tr. 56-57). She emphasized that her goal was to help people (Tr. 57). Over the years, she placed "tens of thousands of workers . . . with families and employers who needed help" (Resp. Ex. I).

In 2022, during what Ms. Laznik described as a "migrant crisis . . . unprecedented in both . . . scale and . . . speed," "people started [pouring] into New York," and she "wasn't ready" (Tr. 67). Job seekers showed up at her agency in increasing numbers, and she "couldn't refuse service" (*Id.*). According to Ms. Laznik, "it became crazy. It—it really became crazy" (Tr. 68-69). During this period, she regularly visited DCWP's offices to seek assistance and verify that everything was in order with the business (Tr. 69-70). She described the employees at DCWP as her "friends" (Tr. 77). Although in Ms. Laznik's view, "employment agency laws are too complicated," she and her team nonetheless were "trying to do things right" (Tr. 71-72). She wanted to ensure that Golden Rose operated carefully and avoided mistakes (Tr. 77).

Golden Rose underwent a total of three DCWP inspections—in 2019, 2023, and 2025—and was "completely transparent and open" during those inspections (Tr. 70). The inspector who performed the 2025 inspection "thought everything [was] fine" and even congratulated the employment agency (*Id.*). However, Ms. Laznik subsequently learned that DCWP was charging Golden Rose with multiple violations (*Id.*)

Ana Castillo also testified on behalf of respondent. Ms. Castillo first visited Golden Rose in 2018 as a job seeker but in 2022 became its manager (Tr. 38-41). Her work was mostly administrative, as she was responsible for organizing the registry, receipts, and other documents (Tr. 29, 41). She also processed refunds of fees, which Golden Rose collected from job seekers "[w]hen they applied" (Tr. 44).

Petitioner brought this action after receiving "at least four" complaints about Golden Rose's business practices (ALJ Ex. 1). After reviewing the complaints, petitioner initiated an investigation in September 2023 (*Id.*). Ana Rolon, DCWP's Director of Intake, testified on behalf of petitioner about the complaint review process and resulting charges in this case.

To support the charges, petitioner submitted over 2500 pages of documents, including receipts, consumer complaints, part of the Register and Refund Log, a statement of employee rights and employer obligations, a statement of job conditions, and advertisements. As part of its post-trial submission, and in response to this tribunal's request, petitioner also submitted an index of consumer receipts (ALJ Ex. 2), which itemized the receipts, as well as a summary of the Register and Refund Log (ALJ Ex. 3).

Burden of Proof

Petitioner bears the burden of proving the charges by a preponderance of the credible evidence. *See Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *adopted*, Comm'r Dec. (Nov. 5, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as "the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence." *Prince, Richardson on Evidence* § 3-206 (Lexis 2008). "If the evidence is equally balanced, or if it leaves the [trier of fact] in such doubt as to be unable to decide the controversy either way, judgment must be given against the party upon whom the burden of proof rests." *Id.*; *see Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976).

The resolution of the charges rests in part on a determination of witness credibility. In assessing credibility, this tribunal has considered "witness demeanor, consistency of a witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience." *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

Analysis

Article 11 of the GBL authorizes DCWP to regulate employment agencies in New York City through licensure, enforcement, and regulations that protect job seekers. GBL §§ 172, 189(1), 189 (3) (Lexis 2026); Admin. Code § 20-101 (Lexis 2026). Title 6 of the Rules of the City of New York ("RCNY") sections 5-241 through 5-259 establish the rules and requirements for the licensing, operation, and conduct of employment agencies.

1) Collection of Advance Fees

GBL section 185(3) provides that "[a]n employment agency shall not require or accept a deposit or advance fee from any applicant."

Petitioner alleged that respondent collected advance fees from job applicants in 678 cases (ALJ Ex. 1; Pet. Br. at 4). In support of this allegation, petitioner submitted receipts that respondents issued to customers in August and November 2022 and February, May, and August 2023. Each receipt contains the following fields:

- Date
- Name
- Name of employer
- Telephone

- Address of employer
- Email address
- Job title
- Salary:
- Employment Class
- Amount of free [sic]
- Purpose of free [sic]

(Pet Ex. 1)

Beneath these fields is a line for the applicant's signature and date, and the employment agency representative's signature and date (*Id.*). Most of the receipts reflect a fee of either $50 or $150, although in a few instances a different amount is noted. In no case is the fee higher than $150. Although the fields for "Employment Class" and "Email address" are left blank in many cases, the receipts submitted are otherwise completed, signed, and dated (Pet. Ex. 1).

Respondent did not deny charging advance fees to its customers. Ms. Castillo testified that Golden Rose collected money from job seekers "[w]hen they applied" (Tr. 44). Ms. Laznik acknowledged that Golden Rose "did things wrong," but asserted that when it learned that DCWP was investigating its practice of charging advance fees, it "changed everything" (Tr. 74). Respondent's post-closing reply brief stated that "mistakes were made" and noted that it "ceased collecting advance fees after being notified of regulatory concerns" (Resp. Br. at 5).

None of the job seekers who were charged advance fees testified at trial. Nevertheless, I find that the receipts submitted by petitioner constitute reliable evidence of illegal fee collection. *See Dep't of Consumer and Worker Protection v. CMP Employment Agency Corp.*, OATH Index No. 3574/24 at 4 (Mar. 27, 2025), *modified*, Comm'r Dec. (Sept. 22, 2025) (finding that receipts constituted sufficient evidence of particular incidents in which fees were collected from individual applicants). Although the receipts constitute hearsay, "it is well-settled that hearsay is admissible and may form the sole basis for a finding of fact in administrative proceedings." *Matter of Lin*, OATH Index Nos. 957/20 & 958/20 at 8 (Dec. 8, 2023), *adopted*, Loft Bd. Order No. 5316 (Oct. 17, 2024). Here, the receipts were signed by both the job seeker and an agency representative, and note the date and amount of the fee. This probative evidence was unrebutted at trial.

Based on the foregoing, I find that petitioner has established by a preponderance of the evidence that respondent collected advance fees in 678 cases, in violation of GBL section 185(3).

Accordingly, this charge is sustained.

2) Return of Advance Fees

GBL section 186(1) provides that "[a]ny 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."

Petitioner alleged that respondent failed to return advance fees upon request on three occasions, in violation of GBL section 186(1) (ALJ Ex. 1; Tr. 101-02). In support of this charge, petitioner introduced complaint forms from Patricia Castellanos, Monica Garcia, and Francisco Lizcano, job seekers who claimed they did not receive a deposit refund from Golden Rose upon request. None of the three complainants testified at trial. However, petitioner's summary of the Register and Refund Log shows fees charged, and refunds issued, to applicants between August 1, 2022 and August 31, 2023 (ALJ Ex. 3).

On behalf of respondent, Ms. Castillo testified that the agency returned fees when requested (Tr. 44-45). She stated that she could not recall any instance during her time with Golden Rose where the company failed to grant a request for a refund (Tr. 46). She was not asked by counsel, and did not specifically address, whether Castellanos, Garcia, and Lizcano were sent refunds.

Patricia Castellanos

Castellanos' form, which has a typewritten date of June 8, 2023 on the cover page, is unsigned and contains many blank fields, including the date next to the signature line (Pet. Ex. 3). Although the typed narrative alleges in English that no refund was received, the pre-printed form is in Spanish, and petitioner did not provide the tribunal with an English translation (*Id.*).

The Register and Refund Log indicates that Patricia Castellanos was charged a $50 fee on May 16, 2023 (Pet. Ex. 4; ALJ Ex. 3). No refund is noted (*Id.*).

I find that the unsigned, undated, and incomplete complaint form is insufficiently reliable to establish a violation, even though no refund is noted for this applicant in the Register and Refund log.

Accordingly, this charge is dismissed.

Monica Garcia

Garcia's complaint form is fully completed, signed and dated on July 8, 2023, and is in both English and Spanish (Pet. Ex. 3). The pages in English do not mirror the pages in Spanish but appear to provide similar information (*Id.*). The address listed on the complaint form is "5526 Van Cleef St" (*Id.*). The typed narrative section of the form notes that Golden Rose did not issue a refund upon request (*Id.*).

The Register and Refund Log indicates that Monica Garcia, whose address is listed as "55-26 Vath Cleff," was charged a $50 fee on April 5, 2023 (Pet. Ex. 4; ALJ Ex. 3). The log also notes that a refund of $50 was issued to Garcia but does not indicate on what date (*Id.*).

Either way, the log indicates that Golden Rose provided a refund to Garcia, rebutting her complaint form. Petitioner called no witnesses and presented no additional evidence to clarify this issue. I therefore find that petitioner failed to prove the violation by a preponderance of the evidence.

Accordingly, this charge is dismissed.

Francisco Lizcano

Lizcano's complaint form is fully completed, signed and dated on October 30, 2023, and is written in both English and Spanish (Pet. Ex. 3). Like Garcia's form, the pages in English do not mirror the pages in Spanish but appear to provide similar information (*Id.*). In the narrative section of the form in English, Lizcano states that he paid an advance fee of $150 to Golden Rose on September 1, 2023. Lizcano's name does not appear in the Register and Refund Log, although the log only covers fees paid through August 31, 2023 (Pet. Ex. 4; ALJ Ex. 3). No additional evidence was submitted by either party in connection with this charge.

I find that Lizcano's complaint form sufficiently establishes that respondent failed to provide him with a refund upon request. The unspecific testimony of Ms. Castillo and Ms. Laznik regarding refunds was less reliable than Lizcano's signed and dated complaint form, the substance of which was not rebutted.

Accordingly, this charge is sustained.

3) Language on Receipts

GBL section 181(4) requires employment agencies to provide a receipt for any fee, deposit, consideration, or payment collection from a job applicant. The receipt must contain the following statement, set off in a box above the signature line and printed in bold capital letters:

> An employment agency may not charge you, the job applicant, a fee before referring you to a job that you accept. If you pay a fee before accepting a job or pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days.

(GBL § 181(4)).

Petitioner alleged that at least 678 receipts failed to include this mandatory disclaimer (ALJ Ex. 1; Pet. Br. at 5). Instead, the receipts contained the following language:

> 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 deposit must be credited to the applicant's fee.

(Pet. Ex. 1).

Petitioner argued that this language is deceptive and misleading in that it "affirmatively misrepresents the law by suggesting that the agency is authorized to collect advance fees" (ALJ Ex. 1). Petitioner noted that respondent used this language even though a model receipt was available on DCWP's website for the convenience of employment agency licensees (*Id.*).

It is undisputed that none of the receipts submitted into evidence contain the required language. Instead, the language on the receipts incorrectly informs jobseekers that the agency may charge an advance fee and omits any reference to the seven-day timeline for refunds.

Respondent did not deny the charge or offer a meritorious defense. I therefore find that petitioner proved that respondent failed to include the mandatory disclaimer on 678 receipts, in violation of GBL section 181(4).

Accordingly, this charge is sustained.

4) Failure to Provide a Statement of Employee Rights and Employer Obligations

Administrative Code section 20-771 requires every employment agency engaged in the placement of domestic or household employees to "provide to each applicant for employment as a domestic or household employee and his or her prospective employer, before job placement is arranged, a written statement indicating the rights of such employee and the obligations of his or her employer under city, state and federal law."

Petitioner alleged that respondent committed at least 20 violations of section 20-772 by failing to provide consumers placed in domestic positions with the statement of employee rights and employer obligations (ALJ Ex. 1).

At trial, petitioner did not elicit any witness testimony to support this charge. No domestic employees who received placements through Golden Rose testified, and petitioner's counsel did not ask Ms. Laznik nor Ms. Castillo whether Golden Rose provided a statement of employee rights and employer obligations to its customers. *Cf. Dep't of Consumer & Worker Protection v. KC Beauty Corp.*, OATH Index No. 271/22 at 11-12 (Nov. 3, 2023), *adopted*, Comm'r Dec. (Feb. 6, 2024) (finding that a business failed to distribute required documents to employees after an employee credibly testified that she never received them, and her testimony was corroborated by two investigators who received similar information in interviews with other employees). Petitioner merely asserted that 20 consumers placed in domestic positions were not provided with the statement, and submitted a blank copy of the alleged missing document into evidence (Tr. 104, Pet. Ex. 6). In addition, unlike the violations related to advance fees, respondent did not admit to this charge. I therefore find that petitioner failed to prove by a preponderance of the evidence that respondent did not provide domestic employees with a statement of employee rights and employer obligations.

Accordingly, this charge is dismissed.

5) Failure to Provide a Statement of Job Conditions

Administrative Code section 20-772 requires every employment agency engaged in the job placement of domestic or household employees to provide:

> A written statement, in a form approved by the commissioner, of the job conditions of each potential employment position to which the agency recommends that the applicant apply. Each such statement shall fully and accurately describe the nature and terms of employment, including the name and address of the person to whom the applicant is to apply for such employment, the name and address of the person authorizing the hiring for such position, wages, hours of work, the kind of services to be performed and agency fee.

(Admin. Code section 20-772).

Petitioner alleged that respondent committed at least 20 violations of section 20-772 by failing to provide consumers with the statement of job conditions (ALJ Ex. 1).

As with the previous charge, petitioner did not elicit any witness testimony to support its claim. No domestic employees who received placements through Golden Rose testified, and counsel for petitioner asked neither Ms. Laznik nor Ms. Castillo whether Golden Rose provided a statement of job conditions to customers. *Cf. KC Beauty Corp*., OATH 271/22 at 11-12. Petitioner asserted that 20 consumers placed in domestic positions were not provided with the statement and submitted as evidence a blank copy of this required document, but it presented no further evidence to substantiate its position (Tr. 103-04, Pet. Ex. 7). Finally, respondent did not admit to the charge. I therefore find that petitioner failed to prove by a preponderance of the evidence that respondent did not provide domestic employees with a statement of job conditions.

Accordingly, this charge is dismissed.

6) Publishing Advertisements without a DCWP License Number

GBL section 187(3) prohibits employment agencies from publishing advertisements in newspapers or otherwise, or using letterheads, receipts, or other written or printed matter, unless each contains "the name and address of the employment agency, the word 'agency,' and the agency's license number."

Petitioner alleged that respondent committed at least two violations of section 187(3) by publishing advertisements without a DCWP license number. In support of this charge, petitioner submitted nine pages of written material, whose admissibility was stipulated to by the parties (Pet. Ex. 13). The first page of Petitioner's Exhibit 13 contains copies of what appear to be six business cards arranged in three rows of two (*Id.*). The cards have different fonts, colors, and styles, and all contain Golden Rose's contact information and a list of job types (*Id.*). Three cards are in English, one is in Spanish, and two are in both languages (*Id.*). For the cards written in Spanish, no English translation was provided. Three of the six business cards contain Golden Rose's license number (*Id.*).

Pages 2 through 5 of Petitioner's Exhibit 13 appear to be flyers for Golden Rose. The flyers contain the company's contact information and a list of job types (*Id.*). Three of the four flyers are written in Spanish, and no English translation was provided (*Id.*). Three of the four flyers list Golden Rose's license number (*Id.*).

Pages 6 through 9 of Petitioner's Exhibit 13 appear to be a search engine profile and two social media profiles of the business. Two of the profiles include Golden Rose's contact information (*Id.*). The first social media profile notes that the business has received 73 reviews and a 4.7-star rating (*Id.*). The second social media profile notes, "93 posts, 520 Followers, 1,684 Following" (*Id.*). No additional information is provided on any of the four pages.

No witness testimony was elicited in connection with this charge. Petitioner did not establish where the documents were found, how they were used, whether they were published, and, if so, where. Publication is required to establish a violation of GBL section 187(3), and petitioner failed to properly address this crucial element of the charge. Finally, unlike the allegation related to advance fees, respondent did not admit to this charge. I therefore find that petitioner has failed to prove by a preponderance of the evidence that respondent published at least two advertisements without a DCWP license number.

Accordingly, this charge is dismissed.

Findings and Conclusions

1. Petitioner proved that respondent collected advance employment agency fees in 678 instances, in violation of GBL section 185(3).
2. Petitioner proved that respondent failed to refund advance employment agency fees from one applicant who requested a refund, in violation of GBL section 186(1).
3. Petitioner proved that respondent provided applicants with 678 advance employment agency fee receipts that did not contain required disclaimer language, in violation of GBL section 181(4).
4. Petitioner failed to prove that respondent did not provide 20 job applicants with a statement of employee rights and employer responsibilities.
5. Petitioner failed to prove that respondent did not provide 20 job applicants with a statement of job conditions.
6. Petitioner failed to prove that respondent published at least two advertisements that did not contain its DCWP license number.

Recommendation

Petitioner seeks civil penalties totaling $883,200 for the charged violations (Pet. Br. at 8). Petitioner also seeks the creation of a restitution fund of $426,324, "to ensure that consumers are made whole, and that [r]espondent does not retain ill-gotten proceeds of its unlawful practice of collecting advance fees" (*Id.*). Additionally, petitioner requests that Golden Rose's employment agency license be suspended for a period of at least 60 days, pursuant to Administrative Code section 20-104(e)(1) and GBL section189 (ALJ Ex. 1).

In its post-trial brief, petitioner included the following chart, outlining the basis for its penalty request of $883,200:

Count	Statute	Number of Violations	Penalty per Violation	Total
I.	GBL § 185(3)	678	$750	$508,500
II.	GBL § 186(1)	3	$750	$2,250
III.	NYC Code § 20-700	678	$525	$355,950
IV.	NYC Code § 20-771	20	$375	$7,500
V.	NYC Code § 20-772	20	$375	$7,500
VI.	GBL § 187(3)	2	$750	$1,500

(Pet. Br. at 4-5).

Petitioner failed to prove all of the charges. As penalties are only appropriate for proven violations, petitioner is not entitled to the full extent of its requested relief.

Ms. Laznik submitted a personal statement requesting leniency and consideration of her financial hardship (Resp. Ex. I). In addition to providing details about her personal background, she asserted in her statement that Golden Rose is struggling to stay afloat and asked DCWP "to consider working with [her] toward a fair and manageable settlement, considering the financial challenges [she] face[s] and the long-standing community service [her] business has provided" (*Id.*).

I found Ms. Laznik's trial testimony and personal statement credible and compelling, and acknowledge that she has endured hardship. I credit that she intended her small business to help, not harm, job seekers. I also credit that she sought advice from DCWP and attempted to educate herself about applicable rules and procedures. It is undisputed that her business successfully matched thousands of job seekers with vacant positions. Nevertheless, the penalties for proven violations are set forth in an established fee schedule, and this tribunal does not have the authority to waive or reduce those penalties, or to grant equitable relief, even if mitigating circumstances are present. *See* 6 RCNY §§ 6-47, 6-59; *see Taxi & Limousine Comm'n v. Neumann,* OATH Index No. 1555/11 at 5 (May 9, 2011) ("[E]quitable relief . . . is limited to courts of general jurisdiction and is unavailable in administrative proceedings.").[2]

Civil Penalties

Petitioner seeks a separate penalty for each rule violation. 6 RCNY § 6-59. This calculation is appropriate, as this tribunal has held that when there are multiple violations of the rules regulating employment agencies, a penalty can be imposed for each individual violation. *See Dep't of Consumer & Worker Protection v. Judson Management Group, Inc.*, OATH Index No. 0032/20 at 28 (Apr. 20, 2022), *adopted*, Comm'r Dec. (June 30, 2022).

Illegal advance fee collection

DCWP rules provide that each violation of GBL section 185(3) carries a penalty of $750. Petitioner proved that respondent violated this provision of law 678 times, resulting in a penalty of $508,500 for these violations.

Failing to return fees upon demand

DCWP rules provide that each violation of GBL section 186(1) carries a penalty of $750. Petitioner proved that respondent violated this provision of law on one occasion, resulting in a penalty of $750 for this violation.

Failing to include the required disclaimer language on receipts

DCWP rules provide that each violation of Administrative Code section 20-700 carries a penalty of $525. Petitioner proved that respondent violated this provision of law 678 times, resulting in a penalty of $355,950 for these violations.

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[2] DCWP retains the authority to explore alternative resolutions to the recommended penalties. *See* Charter § 2203(h)(1) (Lexis 2026) (stating that the commissioner may "adopt, reverse, modify, or remand in whole or in part for additional proceedings" a recommendation made by OATH).

Restitution

The petition requests that the tribunal order "restitution to named consumers as set forth in Exhibit 2 of the petition, and to all unnamed consumers who received false and deceptive receipts therefore obscuring that they were charged an illegal and non-refunded advance deposit or fee during the last three years, as identified at the time of trial from [r]espondent's records"(ALJ Ex. 1). Petitioner's post-trial brief requests restitution of $426,324, "to compensate affected consumers for the unlawful fees collected and to prevent [r]espondent from retaining the proceeds of its illegal conduct" (Pet. Br. at 8).

Chapter 64 of the New York City Charter, section 189(5) of the GBL, and section 20-104(e)(1) of the Administrative Code authorize DCWP to order restitution for violations of GBL sections 181(4), 183(3), and 186(1), and for related violations of the Consumer Protection Law ("CPL"). Administrative Code section 20-104(e)(2) states that the DCWP commissioner "may arrange for the redress of injuries caused by such violations . . . ." The CPL also provides broad remedial authority to DCWP, allowing it to seek an order "compelling a defendant to make restitution of all monies, property, or other things of value, or proceeds thereof, received direct or indirectly as a result of any such violations, to all affected consumers whether names or unnamed." Admin. Code § 20-703(i)(2). Finally, this tribunal has previously found restitution appropriate, in addition to civil penalties, for an employment agency's violations of GBL sections 181, 185, and 186. *See CMP Employment Agency Corp.,* OATH 3574/24 at 19.

To support its restitution request, petitioner argues in its post-trial brief that respondent's failure to produce a complete employment register as required by GBL section 179 "warrants an adverse inference that the missing entries would demonstrate on-going illegal fee collection and improper refund practices" (Pet. Br. at 4). However, petitioner did not request an adverse inference in the petition or during trial and failed to produce evidence to support such a request. Witnesses were not questioned about document production, discovery deadlines, or the details and timeframes of Golden Rose's record-keeping practices. Although petitioner asserted in its post-trial brief that respondent "provided records for only certain months and failed to produce its full employment register for the requested period" (Pet. Br. at 4), this assertion, without more, is insufficient to justify an adverse inference. In addition, "a negative inference does not relieve a party of its burden of proof on the ultimate issue to be decided." *Judson Management Group, Inc.*, OATH 032/22 at 25 (finding an agency's statement that respondents failed to maintain records, without additional evidence, insufficient to support a negative inference). Moreover, unlike the employment agency in *CMP Employment Agency Corp.*, OATH 3574/24 at 4, who admitted it failed to maintain a register and refund log and against whom an adverse inference was made, Golden Rose maintained a log in accordance with GBL section 179 and produced it in part.

Petitioner also argues that "[w]here a respondent fails to maintain legally required records, restitution may be determined through reasonable extrapolation and aggregate consumer harm (Pet. Br. at 7, citing *Federal Trade Comm'n v. Braun*, 2024 U.S. Dist. LEXIS 20535 (S.D.N.Y. Feb. 6, 2024)). Petitioner requests restitution of $426,324, basing its calculation on "the historical records [r]espondent maintained and produced to the Department, prior to its failure to maintain and produce the required employment register entries after September 2023" (Pet. Br. at 7). According to petitioner, respondent "collected an average of $18,219 in unlawful advance fees per month" and the employment agency's internal records "reflect a 35% refund rate for the months records were produced" (*Id.*). Petitioner thus calculated a "monthly net consumer injury" of $11,842.35. Petitioner asserts that respondent continued operating through at least April 2024, "and nothing in the record suggests any material change in its business model, consumer volume, or fee-collection practices after August 2023" (*Id.*). It therefore multiplied the monthly net consumer injury amount by 36 months, arriving at $426,324 (*Id.*).

First, I disagree with petitioner's claim that there is nothing in the record to suggest a material change in Golden Rose's practices. Ms. Laznik credibly testified that the business "changed everything" when it learned that DCWP was investigating its practice of charging advance fees (Tr. 74), and petitioner provided no reliable evidence to the contrary. In addition, the three consumer complaints submitted by petitioner were dated June 8, 2023 (Castellanos), July 8, 2023 (Garcia), and October 30, 2023 (Lizcano). That petitioner presented no additional consumer complaints alleging advance fee charges suggests that none were filed, which further supports Ms. Laznik's testimony that Golden Rose changed its practices.

Second, petitioner does not cite any provision of the Administrative Code or its rules authorizing extrapolation. It did not present any expert testimony or similar evidence to show that its extrapolation calculation is statistically valid. Petitioner's reliance on *Federal Trade Comm'n v. Braun*, 2024 U.S. Dist. LEXIS 20535 (S.D.N.Y. Feb. 6, 2024), is misplaced. There, the FTC accused a lender of overcharging customers (*Id.* at *2). In using extrapolation to prove damages, the agency relied on statistical analysis from an economist, who tested random samples (*Id.* at *4-9). The agency also relied on unrebutted evidence of over-collection (*Id.* at *6-9.). Here, in stark contrast, petitioner did not provide any testimony or documentary evidence from an expert or similarly qualified person, there was no showing that its samples were statistically reliable, and respondent rebutted the claim that the 35% refund rate remained constant.

United States ex rel. Michaels v. Agape Senior Community, Inc., 2015 U.S. Dist. LEXIS 82379 (D.S.C. June 25, 2015), is instructive. There, the court rejected the use of statistical sampling and extrapolation to prove damages in a case involving widespread false healthcare claims. The court's analysis of similar cases revealed that statistical sampling and extrapolation may replace direct proof in limited circumstances—for example, where evidence has dissipated and there is no other way prove damages (*Id. at *18-19*). When used, the relevant calculations should involve a statistical methodology established by qualified experts. *See, e.g., United States ex rel. Loughren v. UnumProvident Corp.*, 604 F. Supp. 2d 259, 261 (D. Mass. 2009) ("[E]xtrapolation is a reasonable method for determining the number of false claims so long as the statistical methodology is appropriate.").

Here, petitioner proved by a preponderance of the evidence that respondent charged illegal advance fees in 678 cases but seeks restitution for a much larger pool of job seekers, whose alleged injuries were not proven at trial. This tribunal has declined to impose similarly broad penalties encompassing unproven violations. In *Dep't of Consumer Affairs v. Major World*, OATH Index No. 1897/17, mem. dec. at 55-59 (Jan. 24, 2019), *aff'd sub nom*. *Major World Chevrolet v. Salas*, 216 A.D.3d 427 (1st Dep't 2023), a case involving a car dealership's false advertisements, petitioner requested daily penalties for periods for which there was insufficient proof. The ALJ rejected this claim, noting that "petitioner must prove the daily violations by a preponderance of the evidence and not expect this tribunal to fill in gaps with speculation and sweeping inferences . . . ." *Id.* at 58. After an Article 78 appeal, the First Department affirmed the decision, finding that "[t]he ALJ properly imposed certain penalties on a per-violation or per-advertisement basis." *Matter of Major World Chevrolet,* 216 A.D.3d at 428 (citing *Matter of Van Cortlandt Park Dodge v. Commissioner of Dep't of Consumer Affairs of City of New York*, 178 A.D.2d 234, 235-236 (1st Dept 1991)).

In *CMP Employment Agency Corp.*, the tribunal recommended restitution but noted that it "should not be based on averages or extrapolated data, but should be based on proven violations that have resulted in proven injuries." *CMP Employment Agency Corp.*, OATH 3574/24 at 19. Although DCWP later modified the penalty and awarded the restitution sought, the ALJ's rationale is even more applicable here, where the request for restitution is not based on the employment agency's failure to refund, as in *CMP Employment Agency Corp.,* but rather on the issuance of receipts for illegal advanced fees, a demonstrable violation with a quantifiable injury.

It is axiomatic that DCWP has the authority to order restitution on behalf of aggrieved consumers. It is also axiomatic that a penalty must be based on proven harm. At trial, petitioner did not establish a universe of violations beyond the 678 violations noted in the petition and reiterated in its post-trial brief. Yet, it requests that this tribunal rely on speculation and assumptions to order restitution for unproven violations. Petitioner justifies its request by arguing that respondent failed to produce documentation to cover the entire period at issue (ALJ Ex. 1; Pet. Br. at 7). Petitioner, however, could have attempted to prove the additional violations in other ways, such as by contacting the job seekers directly, whose names, phone numbers, and addresses are listed in Golden Rose's registry (Pet. Ex. 4; ALJ Ex. 3). While there may be incidents of advance fee collection beyond the 678 proven here, as with any other case, it is petitioner's burden to establish those incidents by a preponderance of the evidence. Reliance on "reasonable extrapolation and aggregate consumer harm" cannot replace this burden.

Petitioner's index of consumer receipts shows receipts totaling $49,262 and refunds totaling $17,404.50, amounting to proven unjustly earned gains of $31,857.50 (ALJ Ex. 2; Pet. Br.

at 7). Petitioner now seeks more than thirteen times that amount as restitution. While I agree that respondent must not "retain ill-gotten proceeds of its unlawful practice of collecting advance fees," the record simply does not support restitution in the amount sought by petitioner. I find that $31,857.50, which petitioner calculated as the net proceeds unjustly retained by respondent based on its receipts, is the proven restitution amount on this record.

License suspension

Respondent's employment agency license expired on May 1, 2026. Courts have deemed it appropriate to suspend or revoke an expired license where the underlying conduct occurred before the license expired. *See Gonzalez v. NYS Gaming Comm'n*, 169 A.D.3d 1290, 1291 (3d Dep't 2019) (citations omitted) ("Respondent was not divested of authority, and the administrative action at issue—which was timely commenced and pertained to conduct engaged in by petitioner during the term of his license—was not void, merely because the hearing and final determination occurred after petitioner's license expired by its own terms."); *Sachs v. NYS Racing & Wagering Bd.*, 1 A.D.3d 768 (3d Dep't 2003) (citations omitted) ("[The agency] has clear authority to suspend or revoke licenses which it has issued based upon conduct committed by a licensee during the term of the license. Since the administrative action was timely commenced, it is not rendered void merely because the final determination (with penalties) was made after petitioner allowed his license to expire by not renewing it and, indeed, this Court has recognized that an expired license may be revoked."). Nevertheless, I find that the substantial civil penalties and restitution imposed, which total $897,057.50, are an appropriate penalty for the proven violations, as this tribunal has deemed monetary penalties, without more, sufficient for similar conduct. *See CMP Employment Agency Corp.,* OATH 3574/24 at 22 (imposing monetary penalties only for employment agency who collected advance fees, failed to fully refund fees to customers who requested a refund, and provided applicants with documents that did not comply with legal requirements); *Major World*, OATH 1897/17 at 81 (denying the suspension of car dealerships' licenses given mitigating factors such as "the substantial civil penalty imposed on respondents" and the unlikelihood that there would be "serious violations of the Consumer Laws by [respondents] in the future"). I therefore decline to suspend respondent's expired license.

Tiffany Hamilton
Administrative Law Judge

June 15, 2026

Submitted To:

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Commissioner

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