

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE CHARGE OF)
URI A. SMAJOVITS)
)
UNITED STATES OF AMERICA,)
COMPLAINANT,)
)
v.) 8 U.S.C. 1324b Proceeding
) OCAHO Case No. 92B00060
TKJ, INC. d/b/a SNELLING)
PERSONNEL SERVICES, a)
Florida Corporation,)
RESPONDENT.)
_____)

CONSENT DECREE

Pursuant to the Rules of Practice and Procedure for the Office of the Chief Administrative Hearing Officer (OCAHO), Mr. Uri A. Smajovits, the Office of Special Counsel for Immigration Related Unfair Employment Practices (Office of Special Counsel), and TKJ, Inc. (TKJ) file this consent findings and proposed order with the Court. 56 Fed. Reg. 50,049, 50,054 (1991) (amending 28 C.F.R. § 68.12, and renumbered as 28 C.F.R. § 68.14).

Consent Findings

1. This action is brought by the Office of Special Counsel to enforce the provisions of 8 U.S.C. § 1324b; and 28 C.F.R. Part 44.
2. On March 13, 1992, the Office of Special Counsel filed a Complaint with this Court charging TKJ with two counts of committing unfair immigration-related employment practices against Mr. Smajovits and with one count of committing a pattern and practice of unfair immigration-related employment practices against individuals on the basis of their national origin.
3. Count I of the Complaint charges TKJ with an unfair immigration-related employment practice against Mr. Smajovits on the

basis of his national origin. Specifically, TKJ requested documentation from Mr. Smajovits to demonstrate his right to work in the United States, TKJ would not have requested any documentation of his right to work in the United States.

4. Count II of the Complaint charges TKJ with an unfair immigration-related document practice against Mr. Smajovits. Specifically, TKJ requested that Mr. Smajovits show his alien registration card for employment verification purposes.

5. Count III of the Complaint charges TKJ with a pattern and practice of unfair immigration-related employment practices against individuals on the basis of their national origin. Specifically, TKJ requests documentation of an individual's right to work in the United States only from individuals that it concludes are from countries other than the United States. TKJ does not seek any documentation of an individual's right to work in the United States if the individual is from the United States.

6. TKJ denies the allegations of the Complaint and TKJ's entry into this consent decree is to avoid the cost of litigation and is not an admission of any liability under any statute.

Settlement Terms

7. TKJ will seek permanent placement for Mr. Smajovits for accounting/comptroller positions for a period of six months, following the date of entry of the consent decree. If at the end of six months, TKJ has not obtained at least five (5) interviews for Mr. Smajovits, TKJ will continue to seek permanent placement for Mr. Smajovits, for positions which Mr. Smajovits is qualified, until TKJ has either:

- (a) obtained a total of five (5) interviews; or
- (b) has made two hundred (200) contacts for Mr. Smajovits.

TKJ will submit monthly reports to the Office of Special Counsel which set forth the following information for each contact:

- (a) the company's name, the nature of its business, and an approximate number of employees;
- (b) the name of the TKJ employee that made the contact, the date of the contact, copies of any telephone records of letters evidencing the contact, the name of the individual contacted, and the result of any contact; and

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- (c) a list of all individuals that obtained interviews for accounting/comptroller positions, for which Mr. Smajovits is qualified, through TKJ and a copy of each individual's file, including but not limited to interview data forms and resumes. TKJ may redact the names and any identifying information from the interview data forms prior to submitting them to the Office of Special Counsel.

TKJ will make contacts only with companies of sufficient size to employ an individual of Mr. Smajovits' qualifications. The Office of Special Counsel will determine whether a contact counts towards the two hundred (200) total contacts necessary. The Office of Special Counsel will notify TKJ, in writing, of the basis of the rejection of any contact.

TKJ's obligation to seek five (5) interviews and/or to make two hundred (200) contacts on behalf of Mr. Smajovits will cease prior to reaching these figures if Mr. Smajovits obtains a permanent accounting/comptroller position, for which he is qualified.

8. TKJ will waive any fee, from Mr. Smajovits, for the permanent placement of Mr. Smajovits.

9. TKJ will not engage in the practices of:

- a. Seeking documentation of an individual's right to work in the United States from only foreign nationals; and/or

- b. Seeking specific documents, from among the legally acceptable documents set forth in 8 U.S.C. § 1324a(b) and its implementing regulations, from individuals for employment verification purposes.

10. TKJ will post a notice, in a place visible to all employees, advising all employees of their rights and duties under 8 U.S.C. §1324b. The notice is to be supplied by the Office of Special Counsel and will be posted for a period of six months following the date of entry of the consent decree. The notice is attached as "Notice A."

11. TKJ will provide a notice to each individual that applies for recruitment or referral through TKJ notifying them of their rights under 8 U.S.C. §1324b. The notice is to be supplied by the Office of Special Counsel and will be provided to each individual for a period of six months following the date of entry of the consent decree. The notice is attached as "Notice B."

12. The decision and order based upon the consent findings shall have the same force and effect as a decision and order made after a full hearing.

13. The entire record on which any decision and order may be based shall consist solely of the Complaint, Notice of Hearing, and any other pleadings and documents the Administrative Law Judge shall specify.

14. Mr. Smajovits, the Office of Special Counsel, and TKJ waive any further procedural steps before the Administrative Law Judge.

15. In consideration of the settlement terms contained herein, Mr. Smajovits hereby waives, releases, and covenants not to sue or commence any proceeding against TKJ, Inc.; TKJ, Inc.'s current and/or past officers, directors, agents or employees; or TKJ, Inc.'s parent or franchisor with respect to any matters contained within, or which are the subject of, the allegations in Mr. Smajovits' charge or the consent findings set forth herein. Mr. Smajovits' signature on this consent decree constitutes such waiver and release.

16. Mr. Smajovits, the Office of Special Counsel, and TKJ waive any right to challenge or contest the validity of the decision and order entered into in accordance with this consent decree.

17. Mr. Smajovits, the Office of Special Counsel, and TKJ agree to bear their own costs, attorney fees and other expenses incurred in this action.

WILLIAM HO-GONZALEZ
Special Counsel

_____ By: _____
Date Kirk M. Flagg
Trial Attorney
TKJ, Inc.

_____ By: _____
Date Tom D. Johnson
President - TKJ, Inc.

_____ _____
Date Uri A. Smajovits

APPROVED BY THE COURT:

_____ Date: _____

Administrative Law Judge
Office of the Chief Administrative Hearing Officer

THE IMMIGRATION REFORM AND CONTROL ACT (IRCA)
PROHIBITS EMPLOYMENT DISCRIMINATION

What You Should Know

Under IRCA, when hiring, discharging, or recruiting or referring for a fee, employers with four or more employees may not:

Discriminate because of national origin against U.S. citizens, U.S. nationals and authorized aliens. (Employers of 15 or more employees should note that the ban on national origin discrimination against any individual under Title VII of the Civil Rights Act of 1964 continues to apply.)

Discriminate because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: permanent residents, temporary residents (that is, individuals who have gone through the legalization program), refugees, and asylees.

Employers can demonstrate compliance with the law by following the verification (I-9 form) requirements and treating all new hires the same. This includes the following steps:

Establish a policy of hiring only individuals who are authorized to work. A "U.S. citizens only" policy in hiring is illegal. An employer may require U.S. citizenship for a particular job only if it is required by federal, state, or local law, or by government contract.

Complete the I-9 Form for all new hires. This form gives employers a way to establish that the individuals they hire are authorized to work in the United States.

Permit employees to present any document or combination of documents acceptable by law. Employers cannot prefer one document over others for purposes of completing the I-9 Form. Authorized aliens do not all carry the same documents. For example, not

all aliens who are authorized to work are issued "green cards." As long as the documents are allowed by law and appear to be genuine on their face and to relate to the person, they should be accepted.

IRCA established the Office of Special Counsel for Immigration Related Unfair Employment Practices to enforce the IRCA antidiscrimination provision. Discrimination charges are filed with this Office. Charges or written inquiries should be sent to: The Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035-5490. The Office can also be reached by calling 1-800-255-7688 (toll free) or 202-653-8121; 1-800-237-2515 or 202-296-0168 (TDD device for the hearing impaired). For questions about Title VII, please contact the Equal Employment Opportunity Commission at 1-800-USA-EEOC (toll free) or 202-634-7057 (TDD).

NOTICE B

Notice To All Applicants

The United States Department of Justice and Snelling Personnel Services (TKJ, Inc.) want you to know your rights under the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (referred to collectively as "The Law").

1. The Law requires **all employers** to hire only individuals authorized to work in the United States. In addition, **Snelling Personnel Services** may only refer for employment only individuals authorized to work in the United States. This includes U.S. citizens and aliens authorized to work by the Immigration and Naturalization Service.

2. The Law requires all individuals to provide documents to **their employer** to prove their identity and their work authorization.

3. The Law provides that it is the individual's choice of which documents to provide to their employer. (For example: Any genuine drivers license and social security card, which is not stamped "not for employment purposes," as proof of their identity and authorization to work in the United States. U.S. passports or alien registration cards, as well as other documents, may be used.)

A complete list of acceptable documents along with additional information of your rights under The Law may be obtained from the Office of Special Counsel, U.S. Department of Justice, P.O. Box 65490, Washington, D.C. 20035-5490 or by telephone 1-800-255-7688 (toll free). TDD 1-800-237-2515.