



THE CITY OF NEW YORK
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

NYC DEPARTMENT OF CONSUMER AND
WORKER PROTECTION,

Petitioner,

-against-

CMP EMPLOYMENT AGENCY CORP., and
CHRISTIAN MENESES d/b/a CMP
EMPLOYMENT AGENCY

Respondents.

OATH Index No. 3574/24

Final Agency Decision

On March 27, 2025, the Chief Administrative Law Judge (“ALJ”) Asim Rehman of the Office of Administrative Trials and Hearings (“OATH”) issued a Report and Recommendation (“R&R”) in the above-captioned matter. OATH recommended that Respondents be directed to pay \$1,642,500 in civil penalties to the Department of Consumer and Worker Protection (the “Department”), \$2,255 in restitution to 19 identified consumers, and restitution for the consumers identified in the 832 unique receipts submitted into evidence, in an aggregate amount to be determined by the Department. On June 27, 2025, the Department received Petitioner’s request for modification of the final order.

The Department now issues this Final Agency Decision pursuant to section 2203(h)(1) of the New York City Charter and section 6-02 of title 6 of the Rules of the City of New York. Following a review of the record, the Department adopts OATH’s R&R subject to the modifications explained below.

DISCUSSION

The Department modifies OATH’s R&R to (1) find that Respondents’ violations of New York General Business Law (“GBL”) §181(4) and §181(5) are separate and discrete acts carrying independent penalties; (2) order the creation of a restitution fund based on aggregate consumer harm; and (3) modify the amounts of total civil penalties and restitution in the R&R as discussed herein.

I. Petitioner is Entitled to Separate Penalty Awards for Discrete Acts Committed in Violation of GBL §185(3) and §181(4)

Petitioner established that Respondents violated GBL §185(3) by proving that Respondents collected unlawful advance fees from consumers prior to finding job placements.

R&R at 11. Petitioner also separately established that, once a fee was charged, Respondents failed to include statutorily required disclosures and language on their receipts as required by GBL §181(4). *Id.*

The penalties Petitioner sought for violations of GBL §185(3) and §181(4) are not duplicative because the violations arose from different, discrete conduct by the Respondents. The R&R relied on *Champion Security Services, Inc.*, where OATH found some Earned Safe and Sick Time Act violations were duplicative because they arose from the same set of facts. *Dep't of Consumer and Worker Protection v. Champion Security Services, Inc.*, OATH Index No. 2293/21 (OATH Oct. 23, 2023). The *Champion* decision, in turn, relied on OATH's decision in *Dep't. of Consumer Affairs v. Major World*, which involved the analysis of deceptive documents signed by consumers in connection with their purchase of a secondhand automobile, and whether such conduct violated two different sections of law. *Dep't of Consumer Affairs v. Major World*, OATH Index No. 1897/17, at 40 (OATH Jan. 24, 2019). Ultimately, in that case, the ALJ concluded "[s]ince the same language in the bill of sale and the same rationale form the basis for finding violations...the charges are duplicative." *Id.* at 48.

The conduct by Respondents here, however, is distinguishable, and the ALJ erred in relying on *Champion* and *Major World*. Respondents' violations here turn not on the use of form language but on *two* distinct acts committed against each consumer: (1) collection of advance fees in violation of GBL §185(3); and (2) failure to provide receipts with statutorily required disclosures and language in violation of GBL §181(4). Had Respondents collected illegal advance fees but provided compliant receipts, Respondents would have committed only one violation, which highlights the distinct nature of Respondents' conduct.

Accordingly, Petitioner is entitled to separate penalty awards under each of GBL §185(3) and §181(4), respectively, as Respondents committed distinct acts resulting in separate violations. Respondents committed 832 violations of GBL §181(4), each of which carries a penalty of \$750, for an additional \$624,000 in civil penalties.

II. Petitioner Is Entitled to Recover Restitution for Aggregate Consumer Harm

The R&R must further be modified to ensure that all consumers harmed by Respondents' unlawful conduct may obtain restitution. Despite the Department's role as the City's consumer protection agency, and statutory language that not only allows but directs Petitioner to make harmed consumers whole, the R&R failed to order a restitution fund for aggregate consumer harm.

Under New York State General Business Law §186(1), "[a]ny employment agency which collects, receives or retains a fee or other payment contrary to or in excess of the provisions of the article *shall* return those fees." NYS GBL §186(1) (2025) (emphasis added). And yet, the Tribunal here declined to order that all unlawfully collected fees shall be returned to consumers by the establishment of a restitution fund. Instead, in the R&R, the ALJ relied on a restrictively

narrow reading of section 20-104 of the Administrative Code to reject aggregate cumulative restitution based on evidence of Respondents' conduct. This was in error.

Petitioner's authority to seek restitution is enshrined in the Administrative Code and the New York City Charter. The Administrative Code provides that the Petitioner "may arrange for the redress of injuries" caused by violations of laws, "the enforcement of which is within the jurisdiction of the department," such as the employment agency provisions of the GBL. NYC Admin. Code §20-104(e)(1)-(2). Here, Petitioner established that Respondents collected illegal fees from thousands of unsuspecting job-seeking consumers. Absent restitution for aggregate consumer harm, Petitioner would be unable to redress the full scope of injuries by returning illegal fees as mandated by GBL §186(1).

Local Law 80 of 2020, amending the NYC Charter, clarified and confirmed Petitioner's authority to order broad restitution by adding the following language to the Charter: "Notwithstanding any inconsistent provision of law, the department shall be authorized... *to order restitution or other forms of equitable relief for and payment of monetary damages in connection with*, the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter." *See* NYC Charter, ch. 64, §2203(h)(1) (new text emphasized). While the Administrative Code refers to "injuries caused by *such* violations," the Charter language explicitly allows the Department to order restitution "*in connection with*" violations. To be clear: the Administrative Code's language was not meant to restrict the Department's power to seek restitution. But, to the extent the Charter's language is arguably broader, the Charter language, as quoted above, explicitly governs: "[n]otwithstanding any inconsistent provision of law, the department shall be authorized...." *Id.*

The Department's broad authority to order restitution on behalf of aggrieved consumers is consistent with the treatment of consumer protection regulators by similar federal and state consumer protection statutes. These instructive cases are persuasive authorities here. In *Federal Trade Commission v. Braun*, the district court affirmed the jury's award of restitution sought by the Federal Trade Commission ("FTC") for the defendant's violations of federal law. No. 20-cv-4432 (JSR), 2024 WL 449288, at *8 (S.D.N.Y. Feb. 6, 2024). In *Braun*, the defendant was found to have cheated borrowers by both underpaying how much they were entitled to receive and overcharging how much they were to repay. At issue was the amount of money that should be awarded to properly redress consumers for the defendant's violations. *Id.* The defendant argued against a broad award of restitution based on aggregate harm by claiming the FTC failed to "present evidence as to which specific consumers were harmed." *Id.* at 9.

The court found that "settled Second Circuit precedent" allows the FTC to "rely on a reasonable approximation to determine the aggregate consumer harm that [defendant's] fraudulent conduct caused. To hold otherwise would make it incredibly difficult, if not effectively impossible, for the FTC to ever recover a monetary consumer redress award when there are hundreds of affected consumers." *Id.* Courts interpreting other federal and state consumer protection statutes have come to similar conclusions. *See Federal Trade Commission*

v. Credit Bureau Center LLC., 81 F.4th 710 (7th Cir. 2023) (affirming the FTC’s authority under the FTC Act to award restitution to aggrieved consumers); *Matter of People v. Northern Leasing Sys., Inc.*, 234 A.D.3d 419, 420 (1st Dep’t 2025) (affirming broad restitution award to affected consumers under New York Exec. Law §63(12)); *People v. Two-Wheel Corp.*, 71 N.Y.2d 693,700 (1988) (affirming Attorney General’s right to seek restitution on behalf of consumers who paid inflated prices for generators pursuant to claims brought under GBL §396-r.); *People v. General Elec. Co.*, 302 A.D.2d 314, 316 (1st Dep’t 2003) (holding that, under GBL §349 and Exec. Law §63(12), the “authority to direct restitution includes the authority to order respondents to notify consumers of the right to seek restitution.”); *People v. Gagnon Bus Co., Inc.*, 926 N.Y.S.2d 345 (Qns. Cty. Sup. Ct. 2011) (ordering a hearing “concerning the possible creation of a restitution fund” pursuant to claims brought under GBL §349).

Unlike these on-point federal and state cases, the cases cited by the R&R to limit Petitioner’s ability to order restitution for cumulative harm are inapposite. For instance, in *Dep’t of Consumer Affairs v. Riverdale Towing Associates, Inc.*, OATH ordered restitution for specific violations established at trial. OATH Index No. 1848/17 (Aug. 3, 2017). But critically, the Department did not ever seek restitution based on cumulative harm in *Riverdale Towing*, and thus OATH did not address the issue at all in that case. Moreover, as discussed above, Petitioner’s authority in this case is broader and based on the GBL, Administrative Code, and the New York City Charter.

Likewise, in *A New Beginning for Immigrants Rights, Inc.* and *Major World Chevrolet, LLC, et. al.*, OATH rejected Petitioner’s request to order restitution or create a consumer restitution fund. *See* OATH Index No. 2644/17, at 34-35 (Sept. 17, 2018); OATH Index No. 1897/17, at 81 (Jan. 24, 2019). The Department’s position is that both decisions unduly restricted the Department’s ability to seek restitution.¹ But, regardless, OATH decided both those cases prior to the passage of Local Law 80 of 2020, which unambiguously cemented Petitioner’s Charter authority to order restitution.²

Finally, even absent Petitioner’s authority to order restitution for aggregate consumer harm, Respondents’ failure to produce required records justifies an adverse inference that would allow for the complete calculation of appropriate restitution in this case. An adverse inference is permitted where, as is the case here, a party fails to produce evidence at trial that is required by law to be maintained, and that would establish transactions at issue in the case. *See Dep’t of Consumer and Worker Protection v. Prestige Motor Sales Inc.*, OATH Index No. 2585/19 at 2-3 (DCWP Oct. 6, 2023) (finding a negative inference proper where defendants failed to respond to discovery requests for documents relating to a material fact at issue), *see also Dep’t of Consumer*

¹ OATH decided both cases prior to City Council amending the City Charter to provide DCWP with final decision authority.

² For example, in *A New Beginning for Immigrants Rights, Inc.*, OATH analyzed the old text of §2203 of the Charter and found that it authorized “equitable relief” for violations only of the Earned Sick Time Act. OATH Index No. 2644/17, at 34-35 (Sept. 17, 2018). With the passage of Local Law 80 of 2020, Petitioner’s explicit authority to seek broad restitution is undisputable.

and Worker Protection v. Judson Mgt. Grp., Inc., et al., OATH Index No. 032/20 at 25 (DCWP Jun. 30, 2022), *Love v. N.Y. Hous. Auth.*, 251 A.D.2d 553, 554 (2d Dep’t 1998). Respondents failed to maintain an “Employment Agency Register and Refund Log” as required by GBL §179. Such a register must include, for a period of three years, the date of each application for employment, the date the applicant started work, the name of every person to whom a fee or deposit was charged, and the amount of such fee or deposit. Respondents’ failure to maintain and produce such records as required by law justifies an adverse inference that the records would establish illegal advance fees charged. Respondents failed to follow the law, which required Petitioner to undertake increased efforts to extrapolate the aggregate harm suffered by Respondents’ consumers. The missing register information would have clearly documented the extent of such harm. Respondents should not be relieved of their statutory obligation to refund illegal fees due to their direct violation of the GBL.

III. Respondents are Liable for Restitution for All Affected Consumers

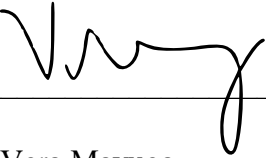
Finally, in the R&R, the ALJ incorrectly concluded that Respondents only collected illegal advance fees from 832 consumers. R&R at 4. The ALJ’s erroneous finding is based on Respondents’ practice of using the same identifying receipt number over multiple discrete transactions for different consumers. In reviewing the receipts, the ALJ concluded that the receipts were duplicative, when in fact, the receipts reflect distinct, unrelated transactions, haphazardly grouped together due to Respondents’ inadequate recordkeeping practices. A close, accurate review of each individual document shows that Respondents charged illegal advance fees to at least 947 unique consumers.³

The Department calculates average restitution per consumer at \$143.68. This figure is calculated based on 947 total consumers being charged a total of \$136,061 in illegal fees. The 947 consumers were harmed by Respondents during a 5-month period. Based on that rate of consumer harm, Respondents harmed 6,818 total consumers over a 36-month period. Respondents are thus liable for total restitution of \$979,610.24 (6,818 total consumers x \$143.68 per consumer).

³ A detailed review of consumer receipts is summarized in Petitioner’s written argument. *See Dep’t of Consumer and Worker Protection v. CMP Employment Agency Corp.*, Request for Modification on Final Order, OATH Index No. 3574/24, Exhibit A, June 27, 2025.

CONCLUSION

OATH's Report and Recommendation is adopted subject to the modifications explained above. Respondents are ordered to pay \$2,266,500 in civil penalties and \$979,610.24 in restitution.⁴



Date: 09/22/2025

Vilda Vera Mayuga
Commissioner
Department of Consumer and Worker Protection

⁴ The R&R recommended restitution of \$2,255 for 19 consumers identified in consumer complaints and that any other restitution imposed here exclude such 19 consumers to the extent those 19 individuals are included in the broader restitution order. *See* R&R at 20-22. DCWP need not make such an exclusion because the total restitution award of \$979,610.24 intentionally includes all consumers harmed by Respondents' conduct, including the 19 consumers identified in consumer complaints.