

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION
OF LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

OF

1443 YORK GOTHAM PIZZA, INC., 1667 FIRST
GOTHAM PIZZA, INC., 144 NINTH GOTHAM
PIZZA, INC., and MICHAEL SHAMAILOV

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)

AOD No. 21-079

Respondent.

ASSURANCE OF DISCONTINUANCE

In 2019, the Office of Attorney General of the State of New York (“Attorney General,, or “OAG,,) commenced an investigation of Gotham Pizza’s pizzeria restaurants located in Manhattan, under the corporate entities 1443 York Gotham Pizza, Inc., 1667 First Gotham Pizza, Inc., 144 Ninth Gotham Pizza, Inc. and its proprietor Michael Shamailov (hereinafter referred to collectively as “Gotham Pizza,,), pursuant to New York Executive Law § 63(12) (“Investigation,,). The Attorney General examined whether Gotham Pizza failed to pay its employees required minimum wages and overtime wages in violation of Article 6 (regarding payment of wages) and Article 19 (Minimum Wage Act) of the New York Labor Law and the New York Codes, Rules, and Regulations (“N.Y.C.R.R.,), Title 12, Chapter II, Subchapter B, Part 142 (“Miscellaneous Wage Order,,).

This Assurance of Discontinuance (“Assurance,,) contains the Attorney General’s Findings in connection with the Investigation and the relief agreed to by the Attorney General and Gotham Pizza (collectively, the “parties,,).

RELEVANT STATUTORY FRAMEWORK

1. The New York Labor Law requires that employers pay covered employees the minimum wage, and one-and-one-half times an employee's regular rate for hours worked over forty in a week. NYLL § 652; 12 N.Y.C.R.R. § 142. The NYLL requires that employers pay workers all wages for all hours worked on a weekly basis. NYLL § 191(1)(a).

2. Employers are required to pay their employees one hour's pay at the basic minimum hourly wage rate for any day in which the spread of hours exceeds 10 hours. The spread of hours is the interval between the beginning and end of an employee's workday and includes working time plus time off for meals plus intervals off-duty. 12 N.Y.C.R.R. § 142.

3. New York Labor Law requires employers to keep accurate records of the hours worked each workday and each workweek by each of their employees who are entitled by State law to receive overtime payments. Employers are required to create and maintain contemporaneous and accurate payroll records for six years showing each employee's regular and overtime rates, deductions, allowances, daily and weekly hours worked, and gross and net wages paid. Employers are also required to provide employees statements with every payment of wages accurately listing the hours the employees worked, gross payments, deductions, allowances and net payments. NYLL §§ 195(1), 195(3), 195(4), 661; 12 N.Y.C.R.R. § 142.

4. Employers are further required to provide employees and maintain certain notices regarding the payment of wages, including pay rate notices that list any claimed allowances or credits, in order to deduct those credits from any required wages. New York Labor Law § 195(1)(a), (3) (requiring wage statements which must list allowances), § 195(4) (records must be maintained for six years including records of allowances); 12 N.Y.C.R.R. § 142.

FINDINGS

Introduction and Background

5. Gotham Pizza is owned and operated by Michael Shamailov. Michael Shamailov serves as President and General Manager of the day-to-day operations. Each location has its own corporate entity name and is a registered domestic business corporation, which consist of 1443 York Gotham Pizza, Inc., 1667 First Gotham Pizza, Inc., 144 Ninth Gotham Pizza, Inc., 852 Eighth Gotham Pizza, Inc., and 88 Third Gotham Pizza, Inc.

6. There were five different locations, which were located at 88 Third Avenue, 144 Ninth Avenue, 852 Eighth Avenue, 1667 First Avenue, 1443 York Avenue, in Manhattan, New York. The locations that are open and operating at the time of the execution of this Agreement are 1667 First Avenue, 1443 York Avenue, and 144 Ninth Avenue. The locations at 88 Third Avenue and 852 Eighth Avenue are no longer in business.

Practices Related to Payment of Wages

7. The Attorney General interviewed twelve (12) complaining witnesses who worked at Gotham Pizza as delivery persons, chefs, waiters, and bussers. The Investigation revealed that they were paid below minimum wage between 2016 and 2019. For example, in 2016, the workers received an average rate of pay of \$6.00 per hour, instead of \$7.50, the minimum wage rate with the tip credit applied. As the tip credit minimum wage increased between 2017 and 2019, Gotham Pizza continued to pay most of its workers only a \$6.00 per hour rate. Gotham Pizza also failed to pay the proper overtime rate of pay when workers worked more than forty hours in one work week, and instead, only paid workers a straight time hourly rate for the overtime hours worked.

8. The Attorney General issued subpoenas pursuant to the Investigation in October, 2019. The Investigation revealed that from approximately January 1, 2016, through December 31, 2019, Gotham Pizza failed to pay its employees minimum wage and the required overtime rate for

all hours worked over forty in a workweek. The records revealed that Gotham Pizza failed to keep contemporaneous and consistent payroll records for its employees at all its locations. Workers were not given any wage statements as required by New York Labor Law.

9. The Attorney General calculated that Gotham Pizza owed its employees a minimum of \$175,000.00, during this time period between 2016 and 2019.

10. Based on the foregoing, the Attorney General has concluded that Gotham Pizza engaged in persistent and repeated activity in violation of Executive Law § 63(12), the New York Labor Law and implementing regulations, including the Miscellaneous Wage Order.

11. Gotham Pizza neither admits nor denies the Findings of the Attorney General set forth in paragraphs 5 through 10 herein.

12. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. Therefore, the Attorney General is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Executive Law § 63(12) and 12 N.Y.C.R.R. § 142, based on the conduct described above from approximately January 1, 2016 through December 31, 2019.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Compliance with Wage and Hour Law and Other Laws Governing Employment Practices

13. Gotham Pizza hereby acknowledges that it understands and will comply with all applicable federal, state and local laws, including but not limited to the Fair Labor Standards Act, New York State Labor Law, and the Miscellaneous Wage Order.

- a. pay all employees for all hours worked, at a rate that meets or exceeds the minimum and overtime wages required by law, including any increases mandated by federal, state or municipal law;
- b. pay all wages on at least a weekly basis, as required by New York Labor Law § 191(1)(a);
- c. comply with all relevant federal, New York State and New York City employee policies, including but not limited to, the federal Family and Medical Leave Act, New York City's Paid Sick Leave Law, and New York State's Paid Family Leave Law;
- d. comply with the FLSA and New York Labor Law by providing full reimbursement to employees in a timely manner for any employee payment of expenses necessary to perform job duties;
- e. post all notices for employees as required by law, including those setting forth employee rights with respect to wage and hour laws and the right to be free from retaliation.

Recordkeeping

14. Gotham Pizza agrees to comply with the notice and six-years recordkeeping requirements as set forth under New York Labor Law § 195 and 12 N.Y.C.R.R. Part 142.

- a. Gotham Pizza agrees to maintain for six years: (a) all documents employees must review and/or complete in order to be employed, including but not limited to required notices, employee manuals and acknowledgements of receipt thereof; (b) documents created by Gotham Pizza related to employment practices, including but not limited to payroll records, revenue and expense reports, time records, weekly schedules, records of reimbursed employee expenses, records of distributed gratuities, notices provided to employees regarding paid sick leave, records showing accrual and use of paid sick leave, tax documents, including but not limited to New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns, and proof of purchase of workers' compensation and disability insurance for all employees; and (c) information records concerning employee complaints regarding pay practices, including but not limited to a complaint log and any underlying documents relating to the complaint log.

Oversight/Monitoring

15. *Periodic Compliance Reports:* Gotham Pizza shall provide the Attorney General with a report detailing their compliance with the requirements set forth in this Assurance, which will first be submitted to the Attorney General six (6) months after the Effective Date. This report shall be in writing and shall set forth in detail the manner and form of Gotham Pizzas' compliance with this Assurance. This report shall be signed under oath by Gotham Pizza ^{owner} ~~co-owner~~ Michael Shamailov. Thereafter, a report of compliance shall be submitted to the Attorney General on the one-year anniversary of the Effective Date. This will complete the obligation to provide reports of compliance, except unless the Attorney General requests such a report during the Effective

Period, thereafter. In any case, where the circumstances warrant, the Attorney General may require Gotham Pizza to file an interim report of compliance upon thirty (30) days' notice.

16. Gotham Pizza expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the Attorney General thereafter may commence the civil action or any other appropriate investigation, action, or proceeding.

17. All correspondence related to this Assurance must reference "Assurance # 21-079.,,

Retaliation

18. Gotham Pizza agrees that it will comply with New York Labor Law § 215 and will not in any manner discriminate or retaliate against any of its employees, including but not limited to current or former employees who cooperated with or are perceived to have cooperated with the Attorney General's Investigation. Gotham Pizza agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the Attorney General's Investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the New York State Labor Law and New York Codes, Rules, and Regulations.

Monetary Payment

19. Gotham Pizza will pay a total of \$175,000.00 (the "Settlement Funds,") in resolution of the Attorney General's investigation. Gotham Pizza has transferred ^{50,000} ~~\$100,000.00~~, to Gotham Pizza's attorney's escrow account, upon the signing of this agreement and provided proof of such transfer. *Gotham Pizza shall pay an additional 50,000 in full on April 1, 2022* Gotham Pizza will transfer the \$100,000.00, from its attorney's escrow account and will pay the remaining \$75,000.00 owed on or before April 15, 2022, directly to the Attorney General. The Settlement Funds will be paid directly to the Attorney General, and deposited in the Attorney

General's restitution account, and will be used for distribution as restitution to former employees after April 15, 2022.

20. The Attorney General has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. The Attorney General will provide Gotham Pizza with an accounting of all amounts issued to payees.

MISCELLANEOUS

Subsequent Proceedings:

21. The Office of the Attorney General will not prosecute Gotham Pizza for any crimes arising under the New York State Labor or Penal Laws that could be charged in connection with the improper payment of wages, New York State Unemployment Insurance Contributions or Workers Compensation Insurance by Gotham Pizza between January 1, 2016 and December 31, 2019. The agreement not to prosecute in this paragraph is limited to the New York State Office of the Attorney General and cannot bind other government agencies.

22. Gotham Pizza expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 28, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by Gotham Pizza prior to or after the effective date of this Assurance;

- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Gotham Pizza irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

23. If a court of competent jurisdiction determines that the Gotham Pizza has violated the Assurance, Gotham Pizza shall pay the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

24. This Assurance is not intended for use by any third party in any other proceeding.

25. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Gotham Pizza. Gotham Pizza shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

26. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

27. Any failure by the OAG to insist upon the strict performance by Gotham Pizza of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Gotham Pizza.

Representations and Warranties

28. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Gotham Pizza and its counsel and the Attorney General's own factual investigation as set forth herein. Gotham Pizza represents and warrants that it has not made any material representations to the Attorney General that are inaccurate or misleading. If any material representations by Gotham Pizza are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

29. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Gotham Pizza in agreeing to this Assurance.

30. Gotham Pizza represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

31. Nothing in this Agreement shall relieve Gotham Pizza of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

32. Nothing contained herein shall be construed to limit the remedies available to the Attorney General in the event that Gotham Pizza violates the Assurance after the date of execution.

33. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

34. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the Attorney General, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

35. Gotham Pizza acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation and with the advice of counsel.

36. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

37. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

38. The Effective date of this Assurance shall be April 15, 2022.

39. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Gotham Pizza to the Attorney General:

New York State Office of the Attorney General, Berenice Peck, Labor Bureau, 28 Liberty Street, Fl. 15 New York, NY 10005, or Berenice.Peck@ag.ny.gov.

From the Attorney General to Gotham Pizza:

Harold Seligman, Esq., Long Tuminello LLP, 140 4th Avenue, Bay Shore, NY 11706; (631) 666-2500; hseligman@msn.com.


Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

40. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

41. This Assurance will expire three (3) years after the Execution Date, except that the OAG may, in its sole discretion, extend the Effective Period upon a determination that any Gotham Pizza location has not fully complied with this Assurance.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as follows.

LETITIA JAMES
Attorney General of the State of New York

By: 
Jennifer S. Michael
Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005
Phone: (212) 416-8763

Dated April 19, 2022

GOTHAM PIZZA


By: _____
Michael Shamailov
Individually and as President, 1443 York Gotham Pizza,
Inc., 1667 First Gotham Pizza, Inc., 144 Ninth Gotham
Pizza, Inc.
254 East 68th Street, Apt 9A
New York, New York 10065

Dated: February ____, 2022

41. This Assurance will expire three (3) years after the Execution Date, except that the OAG may, in its sole discretion, extend the Effective Period upon a determination that any Gotham Pizza location has not fully complied with this Assurance.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as follows.


LETTIA JAMES
Attorney General of the State of New York

By: 
Jennifer S. Michael
Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005
Phone: (212) 416-8763

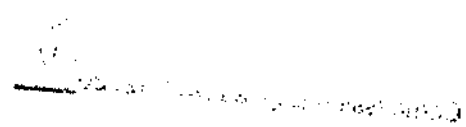
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to...
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Dated April 19, 2022

GOTHAM PIZZA

By: 
Michael Shtamailov
Individually and as President, 1443 York Gotham Pizza,
Inc., 1667 First Gotham Pizza, Inc., 144 Ninth Gotham
Pizza, Inc.
254 East 68th Street, Apt 9A
New York, New York 10065

Dated: March 7
~~February~~ _____, 2022




STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

On this 7 day of February, 2022, Michael Shamailov, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he executed the within instrument by his signature on the instrument.

Sworn to before me this
7 day of February, 2022

HAROLD SELIGMAN
Notary Public, State of New York
No. 028E4988534 Suffolk County
Commission Expires Nov. 12, 2025



NOTARY PUBLIC

MICHAEL SHAMAILOV

By: _____
Michael Shamailov
Individually and as President, 1443 York Gotham
Pizza, Inc., 1667 First Gotham Pizza, Inc., 144
Ninth Gotham Pizza, Inc.


March 7
Dated: February ____, 2022

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

On the 7 day of February, 2022 before me personally came Michael Shamailov to me known, who, being by me duly sworn, did depose and say that he resides at 254 East 68th Street, Apt 9A, New York, New York 10065; that he is the President of the Gotham Pizza Corporations, 1443 York Gotham Pizza, Inc., 1667 First Gotham Pizza, Inc., 144 Ninth Gotham Pizza, Inc., described herein and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this
7 day of February, 2022

HAROLD SELIGMAN
Notary Public, State of New York
No. 028E4988534 Suffolk County
Commission Expires Nov. 12, 2025



NOTARY PUBLIC