

U.S. Department of Labor

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Issue Date: 18 May 2015

**CASE NOS. : 2003-ERA-7
2003-ERA-33**

IN THE MATTER OF

SYED M. A. HASAN

Complainant

v.

**J.A. JONES, INC., AND its subsidiaries
J.A. JONES CONSTRUCTION COMPANY;
J.A. JONES SERVICE GROUP; and
LOCKWOOD GREENE ENGINEERS, ET AL.,**

and

**PROFESSIONAL PROJECT SERVICES a/k/a
J.A. JONES SERVICES GROUP, INC.**

Respondents

ORDER DISMISSING CASES

On October 1, 2003, Respondents filed a "Notice of Bankruptcy and Suggestion of Stay" in Case No. 2003-ERA-7 advising that J.A. Jones, Inc., et al., filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western Division of North Carolina.

On October 6, 2003, an Order Granting Stay issued staying all matters until the automatic bankruptcy stay is lifted.

On October 6, 2003, a Notice of Bankruptcy and Suggestion of Stay was filed by Respondents in Case No. 2003-ERA-33. Respondents filed a voluntary petition for relief under Chapter

11 of Title 11 of the United States Code, 101 U.S.C. §101 et seq., in the U.S. Bankruptcy Court for the Western District of North Carolina. On October 8, 2003, Complainant filed a letter confirming Respondent's bankruptcy filing.

On October 14, 2003, the undersigned issued an Order Granting Stay in Case No. 2003-ERA-33 in view of the automatic stay provisions of the Bankruptcy Code. It was then noted that "the automatic stay will continue until the bankruptcy case is closed, dismissed or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay."

On July 8, 2004, the undersigned issued an Order Directing Compliance With Stay Order in Case No. 2003-ERA-33. On July 20, 2004, Respondent filed a response that the debtor's Chapter 11 cases are pending before the U.S. Bankruptcy Court and accordingly the automatic stay remains in effect. It was represented that Complainant twice filed motions with the Bankruptcy Court to modify the automatic stay to allow his claims to proceed, both of which were denied.

On September 24, 2007, in response to the undersigned's request for an updated status of the pending bankruptcy proceeding, Counsel for the Official Committee of Unsecured Creditors (the Jones Committee) filed an update indicating that the Bankruptcy Court entered a Confirmation Order on August 19, 2004, confirming the Joint Chapter 11 Plan of Liquidation for J.A. Jones, Inc. It was further noted that Complainant has **no** formally filed or scheduled claims against any of the Jones Debtors and that "the bar date for the submission of claims against the Jones entities passed in February 2004. Therefore, Mr. Hasan is barred from receiving any distribution from the Jones Committee in its capacity under the Plan."

The Bankruptcy Court records reveal that Complainant filed an Emergency Motion for Relief from Stay on October 21, 2003, which was denied on January 23, 2004. The Bankruptcy Court also denied Complainant's Motion to Reconsider the December 8, 2003 ruling denying Complainant's motion to "lift the stay." On June 30, 2004, the Bankruptcy Court also denied Complainant's Second Motion to Reconsider lifting the automatic stay.

On February 14, 2011, the undersigned issued an Order to Show Cause to Complainant to show cause, in the absence of a successful motion for relief from the Automatic Stay why this matter should not be dismissed since it was not then and may never be in a posture to be litigated.

On April 15, 2011, the undersigned issued an Order Continuing Stay of Proceedings since the Bankruptcy Court confirmed the Chapter 11 Plan and there was no evidence that the bankruptcy case had been closed, dismissed or discharged, nor had the Court Lifted the Stay.

On April 9, 2014, the Bankruptcy Court issued a "Final Decree (A) Dissolving and Discharging The Committee; (B) Discharging The Disbursing Agent, Claims Agent, Liquidation Trustee, and Plan Administrator; (C) Exculpating Professionals; (D) Waiving Any Requirement to File a Final Report and Accounting; and (E) Closing the Reorganized Debtors' Case in the Case of In Re: J.A. Jones, Inc., et al., Case No. 03-33532. Thus, the following cases were closed: J.A. Jones, Inc., 03-33532; J.A. Jones Construction Company, 03-33540; and J.A. Jones Services Group, 03-33591.

As of April 9, 2014, the Bankruptcy Court has issued a final decree dissolving and discharging the Jones Committee; discharging the disbursing agent, claims agent, liquidation transfer and plan administrator; and closing the cases.

There is no evidence that Complainant filed a proof of claim in either of the instant ERA Complaints, and thus the Bankruptcy Court's Plan of Liquidation discharged any liability that Respondent's may have had toward Complainant on either of the above captioned employee protection complaints under the ERA. See Belt v. Consolidated Freightways Corporation, ARB No. 06-069, ALJ Case No. 2002-STA-32 (ARB Jan. 31, 2008).

Nevertheless, even if Complainant filed a proof of claim, under Section 1141(d)(1)(A) of Title 11 of the Bankruptcy Code, the effect of confirmation of a Chapter 11 reorganization plan "**discharges** the debtor from **any debt** that arose before the date of such confirmation." See also 11 U.S.C. §944(b)(1). The discharge "operates as an injunction against the commencement or continuation of an action." 11 U.S.C. §524(a)(2). The Bankruptcy Court in the instant matter discharged the Committee "from any further obligation related to these cases" and excused any liability to any person or entity for any act taken or omitted to be taken in connection with or related to the cases in the bankruptcy proceeding. Under similar factual circumstances, the ARB affirmed the dismissal of a SOX Complaint that was otherwise discharged by the Bankruptcy Order. See Mothershead v. Delphi Corp., ARB No. 10-120, ALJ Case No. 2007-SOX-84 (ARB Apr. 26, 2012).

On April 3, 2015, an Order to Show Cause issued to Syed M. A. Hasan to show cause by April 24, 2015, why these matters should not be dismissed for the reasons expressed above. Syed Hasan duly received the Order to Show Cause.

On April 3, 2015, an Order to Show Cause issued to Attorney Stephanie Burton. On April 17, 2015, the mailing was returned with "insufficient address." Having discovered a new address, this Order was served upon addressee on April 23, 2015, which was received on April 27, 2015.

Accordingly, **IT IS HEREBY ORDERED**, in view of the foregoing and particularly the closure of the Debtor's cases, that Complainant and Respondents have not responded to the Show Cause Orders and thus have failed to show cause why Case Nos. 2003-ERA-7 and 2003-ERA-33 should not be dismissed for the foregoing reasons. Accordingly, Case Nos. 2003-ERA-7 and 2003-ERA-33 are hereby **DISMISSED** with prejudice.

ORDERED this 18th day of May, 2015, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service

(eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.