



Issue Date: 13 February 2019 CASE NO.: 2008-LCA-00011

In the Matter of:

DONGSHENG HUANG,
Prosecuting Party,

vs.

ULTIMO SOFTWARE SOLUTIONS INC.,
Respondent,

**ORDER DENYING
MOTION TO RENEW JUDGMENT**

This order relates to an enforcement action by the Administrator of the Wage and Hour Division of the Department of Labor (“Department”) with respect to a labor condition application filed by the Respondent, Ultimo Software Solutions, Inc., (“Ultimo”), to obtain an H-1B visa for the Prosecuting Party, Dongsheng Huang. On December 17, 2008, Administrative Law Judge (“ALJ”) William Dorsey issued a Decision and Order (“D&O”) awarding the Prosecuting Party unpaid wages, unpaid benefits, costs, and updated documentation related to his work experience and visa. On December 10, 2018, the Prosecuting Party filed a Motion to Renew ALJ Judgment (“Motion”) with the Office of Administrative Law Judges (“OALJ”). Because Judge Dorsey retired from the Office of Administrative Law Judges in 2016, this motion was referred to me. Respondent did not respond to the motion. The motion is denied because Judge Dorsey’s D&O is not expiring and therefore not in need of renewal.

This case has a long post-decision history, which I review to help illuminate the situation. As stated, Judge Dorsey’s D&O awarding approximately \$150,000 in damages was issued on December 17, 2008. Both parties petitioned for review by the Administrative Review Board (“ARB”), which was granted, and the ARB issued a Decision and Order affirming Judge Dorsey’s decision on March 31, 2011. *Huang v. Ultimo Software Solutions, Inc.*, 2011 WL 1247210, ALJ No. 2008-LCA-00011, ARB Nos. 09-056, 09-044 (ARB Mar. 31, 2011). The Prosecuting Party sought reconsideration, which was denied on November 10, 2011. *Huang v. Ultimo Software Solutions, Inc.*, 2011 WL 6114378, ALJ No. 2008-LCA-00011, ARB Nos. 09-056, 09-044 (ARB Nov. 10, 2011).

The Administrator of the Wage and Hour Division issued an interest computation on February 29, 2012, and the Prosecuting Party filed motions with Judge Dorsey contesting the interest calculation and other aspects of the award. The Respondent also filed a document seeking permission to pay the amount due in installments of \$20,000.00 per month until the full amount was paid. Judge Dorsey affirmed the interest calculations and ordered Respondent to pay in full as required by the applicable regulations. *Huang v. Ultimo Software Solutions, Inc.*, Order Concerning

Compliance and Denying Request to Pay the Administrator in Monthly Installments, ALJ No. 2008-LCA-00011 (ALJ Mar. 22, 2012). The Prosecuting Party sought reconsideration and clarification, but the motion was summarily denied on April 11, 2012. The Prosecuting Party then sought ARB review of Judge Dorsey's March 22, 2012, order affirming the interest calculations. The ARB denied the petition for review on May 30, 2012. *Huang v. Ultimo Software Solutions, Inc.*, Notice to Parties that Case Has Not Been Accepted for Review, 2012 WL 1999683, ALJ No. 2008-LCA-011, ARB No. 12-071 (ARB May 30, 2012).

In January 2012, before the interest computation was issued or affirmed, the Prosecuting Party filed a complaint against the ARB in the Southern District of Texas, alleging APA violations and errors in its decision affirming the D&O.¹ The complaint was dismissed for failure to state a claim upon which relief could be granted. *Huang v. Administrative Review Bd., U.S. Dep't of Labor*, No. 12-0035, 2013 WL 4042008 (S.D. Tex. Aug. 8, 2013). It was appealed to the Fifth Circuit, which affirmed the dismissal.² *Huang v. Administrative Review Bd., U.S. Dep't of Labor*, 579 Fed. App'x 228 (5th Cir. 2014). In February 2012, also before the interest computation was issued or affirmed, the Prosecuting Party filed suit against Respondent in the Northern District of California, arguing that it had not complied with the order to pay him and alleging APA violations. *Huang v. Ultimo Software Solutions, Inc.*, No. 5:12-cv-00785-PSG, 2012 WL 12883815 (N.D. Cal. June 5, 2012). This complaint was dismissed because there was no agency action subject to judicial review at the time the complaint was filed and because the Administrative Procedures Act does not authorize suit against a private party. *Id.* at *2. The Prosecuting Party also appealed this dismissal, and the Ninth Circuit affirmed.³ *Huang v. Ultimo Software Solutions, Inc.*, 577 Fed. App'x 669 (9th Cir. 2014).

The Prosecuting Party now alleges that Judge Dorsey's December 17, 2008, "judgment" has not been satisfied and asks me to renew it for another 10 years. He cites the California Code of Civil Procedure ("CCP") because under California law it will expire 10 years from the date of entry and it has not yet been satisfied by Respondent.⁴ CCP § 683.020, 120. It is unclear what exactly the Prosecuting Party is seeking with the current request. Judge Dorsey's December 17, 2008, Decision and Order is not a "money judgment or a judgment for possession or sale of property" under the CCP, it is an administrative order. CCP §683.020. As such, even if California law applied, it is not subject to the CCP provision and does not expire.

Not only is the D&O not a judgment subject to expiration after 10 years, when it was issued, it was simply an initial Federal agency determination that was not yet reviewable by the courts. Federal agency decisions cannot be reviewed by a federal court until there is a final agency action subject to judicial review. 5 U.S.C. § 704 (2018). Judge Dorsey's D&O was an initial decision that

¹ Among other things, the Prosecuting Party alleged that he was entitled to additional damages that were denied by Judge Dorsey. *Huang v. Administrative Review Bd., U.S. Dep't of Labor*, 579 Fed. App'x 228, 233-35 (5th Cir. 2014).

² The Prosecuting Party's petition for certiorari to the United States Supreme Court was denied. *Huang v. Administrative Review Bd., U.S. Dep't of Labor*, 135 S.Ct. 1746 (2015), *reh'g denied*, 135 S.Ct. 1397 (2015).

³ Prosecuting Party's petition for certiorari to the United States Supreme Court was denied. *Huang v. Ultimo Software Solutions, Inc.*, 135 S.Ct. 1857 (2015), *reh'g denied*, 135 S.Ct. 2855 (2015).

⁴ He argues that a Ninth Circuit case held that state law applies when measuring the life of judgments. However, the Ninth Circuit's analysis in that case also indicates that it is inapplicable here: The court differentiated between a) the federal law establishing how to register the judgment of one federal district court in another federal district court, and b) the state law applicable when a federal court is renewing a judgment "that has already been registered in that state." *Fidelity Nat'l Fin. Inc. v. Friedman*, 602 F.3d 1121, 1123 (9th Cir. 2010). Judge Dorsey's decision is neither a federal district court judgment nor a judgment that has been registered in California.

was appealed to the ARB, so it was not a final agency action at that time. According to the Fifth Circuit, the D&O did not become final and reviewable by federal courts until May 30, 2012, when the ARB notified the parties that it would not review Judge Dorsey's March 22, 2012, order affirming the interest calculations. *Huang v. Administrative Review Bd., U.S. Dep't of Labor*, 579 Fed. App'x 228, 232 (5th Cir. 2014).

The Prosecuting Party alleges that Respondent has not complied with the order issued by Judge Dorsey on December 17, 2008. I have no authority to enforce the order or to take any action at all in this case; Judge Dorsey's decisions became final more than six years ago and the case is long closed. Judge Dorsey's final order in the case made clear that payment occurs through the Administrator of the Wage and Hour Division. *Huang v. Ultimo Software Solutions, Inc., Order Concerning Compliance and Denying Request to Pay the Administrator in Monthly Installments*, ALJ No. 2008-LCA-00011 (ALJ Mar. 22, 2012). The Respondent was required to pay the Administrator, and the Administrator was then to transfer the money to the Prosecuting Party. If Prosecuting Party has not yet received the unpaid wages and other damages he is entitled to under Judge Dorsey's orders dated December 17, 2008, and March 22, 2012, that is an issue for the Administrator or the appropriate federal district court, as the ARB indicated in its November 10, 2011 order denying reconsideration.⁵ *See* 20 C.F.R. § 655.850. I can do nothing in this matter.

The Motion to Renew ALJ Judgment is therefore denied.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge

⁵ If the Prosecuting Party has received those damages and is still unhappy with the specific amounts, as his 2012 complaint filed in the Southern District of Texas indicated, I have no authority to consider his complaint.