

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 December 2018

CASE NO.: 2016-STA-25

IN THE MATTER OF

MICHAEL SMITH

Complainant

v.

ALLIANCE PROCESSORS, INC.

Respondent

ORDER DISMISSING CASE

On April 29, 2016, a Notice of Bankruptcy and Suggestion of Stay was filed by Respondent. Respondent filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 101 U.S. § 101 et seq., in the U.S. Bankruptcy Court for the Northern District of Texas.

On May 2, 2016, the undersigned issued an Order Granting Stay 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 August 3, 2016, and October 28, 2017, Respondent filed status reports that the debtor's Chapter 11 cases are pending before the U.S. Bankruptcy Court and accordingly the automatic stay remains in effect.

On November 1, 2018, in response to the undersigned's request for an updated status of the pending bankruptcy proceeding, Counsel for Respondent filed an updated status report indicating that the Bankruptcy Court entered a Confirmation Order on December 1, 2017, confirming the Debtor's Restated First Amended Plan of Reorganization. It was further noted that Complainant is permanently enjoined and prohibited from the continuation of any action, case, lawsuit or other

proceeding against the Debtor, Alliance Processors, Inc., by the Plan Injunction effective December 18, 2017.

The Bankruptcy Court records further reveal that the Complainant was under an obligation to seek dismissal of this matter pursuant to the Plan Injunction.

Accordingly, Respondent has filed a Request for Dismissal based on the Plan Injunction permanently enjoining the continuation of this matter.

In view of the foregoing, on November 15, 2018, an order issued to Complainant to show cause, if any there be, by December 3, 2018, why this matter should not be dismissed since it is not now and may never be in a posture to be litigated consistent with the Plan Injunction. Complainant was duly served with the Order to Show Cause on November 15, 2018.

Complainant has failed to respond to the show cause order and has failed to show cause why the instant matter should not be dismissed for the foregoing reasons. Accordingly,

IT IS HEREBY ORDERED that Case No. 2016-STA-25 be, and it hereby is, **DISMISSED** with prejudice.

ORDERED this 28th day of December, 2018, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's 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 (e-File) 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

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. See 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. See 29 C.F.R. § 1978.110(a).

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 no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. § 1978.110(b).