U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 February 2020

In the Matter of:

LANGAGER STACK MOVERS AND ROLL-OFF,
Respondent.

Case No. 2019-TAE-00015

ORDER GRANTING ADMINISTRATOR'S MOTION TO ENFORCE SETTLEMENT AND APPROVING CONSENT FINDINGS

This matter arises under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act, 8 U.S.C. §§ 1101, *et seq.* ("Act"), and the implementing regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501 ("Regulations"). Before me is a *Motion to Enforce Settlement* ("Motion") filed by the Administrator, Wage and Hour Division, U.S. Department of Labor ("Administrator"). For the reasons that follow, the Motion is granted and the consent findings are approved.

PROCEDURAL HISTORY

On August 30, 2018, Administrator issued to Langager Stack Movers and Roll-Off a determination detailing the findings of an investigation concerning its petitioning for and employing H-2A workers.[1] The determination identified $4,430.81 in unpaid wages, $20,122.40 in civil money penalties, and debarment for three years.[2] On September 10, 2018, Langager Stack Movers and Roll-Off, by and through its owners Doug Langager and Tammy Langager[3] (individually and collectively referred to as "Respondent"), timely filed a request for hearing.[4]

[1] Motion, Ex. 4; Respondent's Response to Motion ("Response"), Ex. A.

[2] *Id.*

[3] Langager Stack Movers and Roll-Off has at all times, and continues to be, represented by Doug Langager and Tammy Langager in these proceedings.

[4] Motion, Ex. 4; Response, Ex. B.

On December 11, 2018, Administrator issued a corrected determination letter to Respondent, explaining that this determination superseded the August 30, letter.[5] However, the corrected determination letter did not change the amount sought in back wages, civil money penalties, and debarment. On December 27, 2018, Respondent again timely filed a request for hearing.[6]

After negotiations over the course of several months, the parties agreed to resolve their differences and settle this matter, the material terms of which were reduced to writing and finalized in a Consent Findings and Order ("CFO").[7] The CFO stated that Respondent, without admitting or denying any of the alleged violations, agreed to withdraw its contest to the December 11 determination and, in return, Administrator agreed to reduce the back wages to $3,528, reduce the civil money penalties to $10,061.20, and reduce the debarment period to two years.[8] In terms of payment, the CFO provided that Respondent would pay the back wages in full by May 30, 2019, and would make an initial payment of $1,117.92 on the penalty by June, 30, 2019.[9] The remainder of the penalty would be divided into eight payments to be paid on the last day of each month at a statutory interest rate of 1%.[10] According to the CFO, the details of the installment payments were specified in what was referred to as "Attachment 1".[11] Additionally, the CFO provided that both parties agree to waive any further procedural steps before the Office of Administrative Law Judges and the Administrative Review Board regarding all matters that are the subject of the CFO, and further agree to waive any right to challenge, contest, or appeal the validity of the CFO.[12]

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[5] Motion, Ex. 4; Response, Ex. C.

[6] Motion, Ex. 4; Response, Ex. D.

[7] Motion, Ex. 4.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

On June 20, 2019, Administrator's counsel sent to Respondent via e-mail a copy of the CFO for review and signature.[13] On June 28, 2019, Respondent responded with an e-mail stating that she would "get it signed" and would send it out later that night.[14] However, the CFO never arrived. Over the course of the next 60 days, Administrator's counsel sent numerous emails and placed several phone calls to Respondent in an attempt to obtain the status of the CFO, but to no avail.[15] Respondent either ignored counsel's inquiries or continued to assure counsel that the CFO would be signed and returned.[16] Finally, on August 22, 2019, only after Administrator filed with the undersigned a motion for teleconference to discuss the status of settlement, did Respondent send Administrator the signed CFO.[17]

On August 26, 2019, Administrator filed with the undersigned the fully executed CFO and a *Motion to Adopt Consent Findings and Order*.[18] The CFO showed that on July 17, 2019 and August 2, 2019, Administrator's counsel and Respondent signed the CFO, respectively.[19]

On August 28, 2019, the undersigned directed the parties to re-file the CFO with new payment dates because several dates had already passed, and further because the "Attachment 1" referenced in the CFO was not included in the filing.[20] On August 29, 2019, Administrator's counsel informed the undersigned that the parties had conferred and agreed on new payment dates, which would be reflected in the CFO and filed upon execution.[21] However, Respondent was once again non-responsive to Administrator's counsel's repeated efforts to obtain the signed CFO containing the revised dates.[22]

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[13] Motion, Ex. 7.

[14] Motion, Ex. 8.

[15] Motion, Exs. 9-12.

[16] *Id.*

[17] Motion, Ex. 13.

[18] *Id.*

[19] Motion, Ex. 4.

[20] Motion, Ex. 15.

[21] *Id.*

[22] Motion, Ex. 16.

On October 10, 2019, at Administrator's request, a teleconference was held with the parties to address the status of settlement. During the teleconference, Respondent contended that this matter should be dismissed because of Administrator's "mistakes" concerning the dates contained in the CFO. Respondent also indicated he now wanted a hearing. This Motion followed.[23]

PARTIES' CONTENTIONS

Administrator argues that because the CFO was signed by both parties and embodied all material terms agreed to by the parties, Respondent is bound by the agreement and cannot now rescind his assent and seek relief it expressly waived when entering the CFO, including its renewed demand for a hearing.

In its response, Respondent seeks dismissal because the Administrator's counsel "did not get the paperwork filed properly … as the signed dates surpassed the dates stated in the signed [CFO]." It further states that the only reason the CFO was signed "was to show that even the federal government's attorney cannot get the paperwork right." Respondent also takes issue with alleged mistakes it contends were made by the investigators, which gave rise to the determination letters. Specifically, it contends that dismissal is an appropriate remedy due to the investigators' incompetence in filing the wrong paperwork.

DISCUSSION

Settlement of an enforcement action alleging H-2A contractual violations is achieved through consent findings and an order.[24] As the Supreme Court noted in *United States v. Armour & Co*.:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise: in exchange for

[23] *Malave v. Carney Hosp*., 170 F.3d 217, 220 (1st Cir. 1999) ("If … the settlement collapses before the original suit is dismissed, the party who seeks to keep the settlement intact may file a motion for enforcement.").

[24] 29 C.F.R. § 501.40.

> the saving of cost and elimination of risk, the parties give up something they might have won had they proceeded with the litigation.[25]

A consent decree "is little more than a contract between the parties[.]"[26] Upon signing, a party "is obligated according to it terms[]" because a "signature … indicates a mutuality of assent to which a party is bound unless she can show some special circumstance such as fraud, duress, or mutual mistake."[27] Stated differently, when parties enter into a settlement agreement voluntarily and knowingly, it is binding and conclusive, and "[l]ike any other contract," can only "be challenged upon a showing of fraud, duress, illegality, or mutual mistake."[28] "Mere regret" or the belief that "an agreement is disadvantageous" will not void a settlement.[29]

Here, there is no indication that the CFO was the product of fraud, duress, illegality or mutual mistake. And Respondent does not make such an allegation. Indeed, Respondent admits that he freely signed the CFO "to show that even the federal government's attorney cannot get the paperwork right."[30] However, Respondent proffers no evidence in support of this representation, and there is nothing in the record to substantiate his claim that the CFO was signed merely as a means to highlight incorrect payment due dates that preceded the signing and submission of the CFO. To the contrary, the record shows that the CFO was the product of the parties' careful negotiations over many months, and would have been submitted to the undersigned much sooner had it not been for Respondent's persistent delay tactics.[31] Nowhere in the record is there any objective manifestation of anything other than Respondent's assent to the CFO.[32] Therefore, I find that Respondent entered the CFO voluntarily and

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[25] 402 U.S. 673, 681 (1971). *See also Adams v. Bell,* 711 F.2d 161, 195 n.123 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1021 (1984) ("consent judgment is a compromise between two parties . . . fixed by negotiation . . . and formalized by the signature of a . . . judge.").

[26] *Ashley v. City of Jackson, Miss*., 464 U.S. 900, 902 (1983). *See also Ahern v. Board of Educ*., 133 F.3d 975, 981 (7th Cir.1998) ("Although consent decrees have the force of a court order, they are also a form of contract to be construed according to basic principles of contract interpretation.").

[27] *Shelton v. The Ritz Carlton Hotel Co., LLC*, 550 F.Supp.2d 74, 80 (D.D.C. 2008). *See also Ashley*, 464 U.S. at 902 (A consent decree "binds the signatories[.]").

[28] *Taylor v. Greyhound Lines*, ARB Case No. 06-137 (Apr. 30, 2017); *Trice v. Bartlett Nuclear*, ARB Case No. 98-047 (Aug. 28, 1998) (citing *Macktal v. Brown & Root, Inc*., 86-ERA-23 (Sec'y Nov. 14, 1990)).

[29] *Id.*

[30] Response.

[31] Motion, Exs. 6-13.

[32] *See Visiting Nurse Ass'n, St. Louis v. VNA Healthcare, Inc*., 347 F.3d 1052, 1054 (8th Cir. 2003) ("[A] court looks to the parties' objective manifestations of intent and interprets those manifestations as a

knowingly, and his signature evidences a clear, unequivocal declaration to assent to the CFO's terms.

The CFO contains all the material terms, including the amount of the reduced back wages and civil money penalties the parties agreed upon, and the reduced debarment period the parties agreed upon.[33] It also specified the payment terms – i.e. that the back wages would be paid in one lump sum payment, and the civil money penalties would be paid in nine installment payments at an interest rate of 1%.[34] The fact that three of the ten payment dates lapsed prior to the signing and submission of the CFO in no way invalidates the agreement, particularly because the delay was due in large part to Respondent's dilatory behavior. In all, there are no material facts in dispute concerning the terms of the agreement, the CFO is appropriate in form and substance, and the CFO clearly details the respective duties, obligations and agreements of the parties.[35]

Further, the CFO comports with 29 C.F.R. §§ 18.71 and 501.40. Specifically, the CFO states that it shall have the same force and effect as an order made after a full hearing; the entire record shall consist solely of the Order of Reference and the CFO; all further procedural steps before the Administrative Law Judge and the Administrative Review Board are waived; and any right to challenge, contest or appeal the validity of the CFO are waived.

Therefore, I find that the CFO is valid and the parties are bound by its terms.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Administrator's *Motion to Enforce Settlement* is granted.

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reasonable person would. If those manifestations produce a reasonably ascertainable objective meaning, an enforceable agreement exists.").

[33] Motion, Ex. 4.

[34] *Id.*

[35] *Id.*

(2) The Consent Findings and Order filed on August 23, 2019,[36] are approved, adopted, and fully incorporated into this Order, with the following amendments to the dates of payment:[37]

a. Respondent shall pay the Adjusted Back Wages of $3,538 by March 31, 2020.

b. Respondent shall make an initial payment of $1,117.92 on the Adjusted Penalty by April 30, 2020.

c. The remainder of the Adjustment Penalty will be divided into eight monthly payments at the statutory interest rate of 1%, and are to be paid by the last day of each month starting May 31, 2020.

(3) This case is dismissed.

THEODORE W. ANNOS
Administrative Law Judge

Washington, DC

[36] Motion, Ex. 4.

[37] *See OFCCP v. SKF USA, Inc*., ARB Case No. 00-023 (Mar. 30, 2001) ("[A]n amendment of a Consent Order may not be beyond the ALJ's authority.").

NOTICE OF APPEAL RIGHTS: Any party seeking review of this decision, including judicial review, shall file a Petition for Review (§Petition§) with the Administrative Review Board (§ARB§) within 30 days of the date of this decision. 29 C.F.R. § 501.42. 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

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. If you e-File your petition, only one copy need be uploaded.

Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. If the ARB does not receive the Petition within 30 days of the date of this decision, or if the ARB does not issue a notice accepting a timely filed Petition within 30 days of its receipt of the Petition, this decision shall be deemed the final agency action. 29 C.F.R. §501.42(a).