



In the Matter of:

ARVIND GUPTA,

**ARB CASE NOS. 15-032
15-033**

**PETITIONER/
CROSS-RESPONDENT,**

ALJ CASE NO. 2014-LCA-008

v.

DATE: JAN 26 2017

HEADSTRONG, INC.,

**RESPONDENT/
CROSS-PETITIONER**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Prosecuting Party:

Arvind Gupta, pro se, Mumbai, MH, India

For the Respondent:

Dana G. Weisbrod, Esq.; Jackson Lewis, P.C.; New York, New York; Forrest G. Read, IV, Esq.; and Michael H. Neifach, Esq.; Jackson Lewis, P.C.; Reston, Virginia

Before: Paul Igasaki, Chief Administrative Law Judge; E. Cooper Brown, Administrative Appeals Judge; and Joanne Royce, Administrative Appeals Judge

FINAL DECISION AND ORDER

This case arises under the H-1B provisions of the Immigration and Nationality Act, as amended, 8 U.S.C.A. §§ 1101(a)(15)(H)(i)(b), 1182(n)(2) (INA) (Thomson Reuters 2016) and the regulations at 20 C.F.R. Part 655, subparts H, I (2016). Arvind Gupta (Gupta) appeals and Headstrong, Inc. (Headstrong) cross-appeals the Administrative Law Judge's (ALJ) Decision and Order (Jan. 21, 2015) (D. & O.) dismissing this case. The Board affirms the dismissal.

BACKGROUND

This case was previously before the Administrative Review Board (ARB or Board). In 2012, the ARB affirmed the dismissal of that case. *Gupta v. Headstrong, Inc.*, ARB Nos. 11-008, 11-065; ALJ No. 2011-LCA-038 (ARB June 29, 2012)(no hearing or appeal available where Labor Department's Wage and Hour Division (WHD) does not investigate). Gupta sought review.

While the case was pending before the United States District Court for the Southern District of New York, WHD and Gupta entered into a "Stipulation and Order of Remand and Dismissal" based on WHD's determination that the record was incomplete for purposes of judicial review. The order vacated WHD's determination that Gupta's complaints were untimely and remanded the matter to WHD "for a new decision on Gupta's complaints and request for investigation" and to "address whether Gupta's alleged telephonic complaint of January 2008 rendered his complaint timely, and whether any aspect of Gupta's complaints should be deemed timely based on equitable tolling." The court dismissed the case. *Gupta v. Headstrong, Inc.*, No. 1:12-cv-06652-RA (S.D.N.Y. Dec. 10, 2012). Headstrong was not a party to the stipulation.

In 2014, WHD investigated and found that Headstrong was liable for \$5,736.96 in back wages but had already paid these back wages. Complainant's Exhibit 1. Gupta requested a hearing before an administrative law judge. After holding a formal evidentiary hearing on May 6, 2014, the ALJ issued her decision on January 21, 2015.¹ The ALJ dismissed the case based on the parties' Confidential Settlement and Release Agreement (May 8, 2008) and concomitant \$7,000.00 payment. Respondent's Exhibits 15-17. The ALJ found that the settlement included a release of all claims and that the parties' execution of it "fully extinguished" any claim Gupta may have had related to his employment with Headstrong. The ALJ concluded that in light of the parties' 2008 settlement and release of claims, negotiated while Gupta was represented by counsel, Headstrong "does not now owe" back wages, benefits, damages, or interest and "has no current monetary liability" to Gupta. D. & O. at 23, 39, 40. The ALJ specifically rejected Gupta's arguments that the settlement was ineffective, void, fraudulent, or that Gupta had rescinded it. The ALJ also concluded that Gupta's June 2008 written complaint was timely and that Headstrong effected a bona fide termination of Gupta's employment on February 2, 2007. D. & O. at 32-33, 37-40. Gupta appeals the ALJ's dismissal and Headstrong cross-appeals the ALJ's finding that the written June 2008 complaint was timely filed.

The ARB certified four issues for review: (1) whether the ALJ erred in finding that the settlement extinguished all liability; (2) whether the ALJ erred in finding the June 2008 complaint timely; (3) whether the ALJ erred in finding that Headstrong was obligated to provide Gupta return transportation costs to India; and (4) whether the ALJ erred in determining the back wage obligation.

¹ *Gupta v. Headstrong, Inc.*, ALJ No. 2014-LCA-008 (Jan. 21, 2015).

STANDARD OF REVIEW

The Administrative Review Board has authority to review final decisions arising under the Immigration and Nationality Act, as amended, 8 U.S.C.A. §§ 1101(a)(15)(H)(i)(b), 1182(n)(2) and its implementing regulations, 20 C.F.R. § 655.845. *See also* Secretary's Order No. 02-2012, 77 Fed. Reg. 69,378 (Nov. 16, 2012)(delegating to the ARB the Secretary's authority to review cases arising under the INA).

DISCUSSION

Upon review, the Board finds that the extensive evidentiary record amply supports the ALJ's factual findings, including her determination that the parties' settlement and release of claims extinguished all claims against Headstrong. Gupta attacks the settlement as ineffective, void, and fraudulent, and claims that he rescinded it. However, Gupta has evoked no statute, regulation, or precedent authorizing the Board to adjudicate collateral attacks on a facially valid contract. The Board is an administrative body with only the authority emanating from statutes, implementing regulations, and delegations of authority.² The ARB has, however, affirmed an ALJ's dismissal based on the parties' settlement in an INA case involving this same complainant. *Gupta v. Compunnel Software Grp.*, ARB No. 16-056, ALJ No. 2011-LCA-045 (ARB Apr. 29, 2016). In that case, as well as this, the settlement included a release of all claims related to Gupta's employment. Gupta's claims that this settlement is ineffective, void, fraudulent, or has been rescinded by him, are collateral issues that we do not address in this instance.³ Because the ALJ's conclusion that the settlement extinguished all claims is consistent with ARB precedent, we uphold it. We, therefore, affirm the ALJ's dismissal of this case.⁴

² *See, e.g., Gilbert v. Bauer's Worldwide Transp.*, ARB No. 11-019, ALJ No. 2010-STA-022, slip op. at 5 n.10 (ARB Nov. 28, 2012) (saying the same)(citing *Wonsock v. Merit Sys. Prot. Bd.*, 296 Fed. Appx. 48, 50 (Fed. Cir. 2008)).


³ Gupta may choose to return to district court. *See* 20 C.F.R. § 655.850. After the court remanded this case to the Labor Department in 2012, the court issued several orders through 2015 directing Gupta to exhaust his administrative remedies before filing another motion. However, when Gupta persisted in filing motions with the district court, the court indicated, as late as December 1, 2015, that it may impose sanctions. *Gupta v. Headstrong, Inc.*, No. 1:12-cv-06652-RA (S.D.N.Y. Dec. 1, 2015).

⁴ On this record, we doubt whether Gupta had a right to pursue his claims by seeking a formal hearing. The Administrator, Wage and Hour Division, in his amicus brief, asserts that while an H-1B employee may file a complaint notwithstanding any release of his claims in a settlement agreement entered into by the employee and his H-1B employer, the employee cannot seek a formal evidentiary hearing because he effectively waived his right to do so in the settlement agreement. It appears that Gupta waived his right to a hearing and, by extension, any authority we may have to review the settlement agreement, by signing it. *Cf. Khandelwal v. Southern Cal. Edison*, ARB No. 97-050, ALJ No. 1997-ERA-006 (ARB Mar. 31, 1997)(employer named in an employee protection provisions case filed with Occupational Safety and Health Administration under the Energy Reorganization Act

CONCLUSION

Accordingly, the ALJ's dismissal of Gupta's case is **AFFIRMED**. All pending motions, as well as Gupta's recent filing asserting supplemental authority, to which Headstrong has responded, are **DENIED** as moot. Headstrong's cross-appeal is **DENIED** as moot as it cannot affect the outcome of the case. This matter is **DISMISSED** with prejudice.



SO ORDERED.



PAUL M. IGASAKI
Chief Administrative Appeals Judge



E. COOPER BROWN
Administrative Appeals Judge



JOANNE ROYCE
Administrative Appeals Judge

can request termination of investigation based on settlement agreement entered into before complaint was filed). Administrator's Amicus Brief at 17-21.