



In the Matter of:

ARVIND GUPTA,

PROSECUTING PARTY,

v.

COMPUNNEL SOFTWARE GROUP, INC.,

RESPONDENT

ARB CASE NO. 16-056

ALJ CASE NO. 2011-LCA-045

DATE: April 29, 2016

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Prosecuting Party:

Arvind Gupta, pro se, New York, New York

For the Respondent:

Kamal K. Rastogi, Esq.; Plainsboro, New Jersey

Before: E. Cooper Brown, *Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; Luis A. Corchado, *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. §§ 1101-1537 (INA or the Act) (Thomson Reuters 2014) and the regulations promulgated at 20 C.F.R. Part 655, subparts H and I (2015). This case was previously before the Administrative Review Board (ARB or Board). In *Gupta v. Compunnel Software Group, Inc.*, ARB No. 12-049, ALJ No. 2011-LCA-045 (ARB May 29, 2014)(Judge Brown concurring, in part, and dissenting, in part), the ARB affirmed in part and reversed in part, and remanded the case to the Office of Administrative Law Judges for further evaluation of the retaliation claim and for a recalculation of certain damages.

Respondent sought review of the ARB's decision in the United States District Court for the Southern District of New York, *Compunnel Software Group v. Gupta & Perez*, 14 Civ. 4790 (SAS). When the ALJ subsequently ordered the remanded case (ALJ No. 2011-LCA-045) held in abeyance pending a decision by the district court, Gupta requested that the ARB summarily reverse the ALJ's abeyance order, or, alternatively, accept his petition for review (ARB No. 14-086). The ARB declined Gupta's request, indicating that it had divested itself of jurisdiction of the case when it remanded the case to the Office of Administrative Law Judges. Consequently, the ARB closed the appeal. *Gupta v. Compunnel Software Grp., Inc.*, ARB No. 14-086 (Order Sept. 23, 2014).

The district court thereafter dismissed Compunnel's petition, as well as several of Gupta's counterclaims, because the ARB had not yet issued a final decision; granted Compunnel's motion for judgment on the pleadings and dismissed all of Gupta's remaining counterclaims; and denied Gupta's motion for reconsideration. *Compunnel Software Grp. v. Gupta & Perez*, 14 Civ. 4790 (SAS)(Memorandum Opinion and Order Apr. 13, 2015); (Judgment Mar. 19, 2015); (Opinion and Order Mar. 17, 2015)(Order Oct. 22, 2014).

By Order dated November 14, 2014, the ALJ lifted her order of abeyance and the matter was then before her for consideration of the case (ALJ No. 2011-LCA-045) as remanded by the ARB in its May 29, 2014 decision. Subsequently, the parties negotiated a settlement, and the ALJ received their signed Settlement Agreement on March 10, 2016, for approval. Upon review, the ALJ found that the settlement was fair and reasonable; that Respondent agreed to pay to Gupta, upon the ALJ's approval, the entire settlement amount of \$28,000.00; that the parties agreed that the ALJ's Order disposing of the proceeding "shall have the same force and effect as an Order made after a full hearing pursuant to 20 C.F.R. § 655.840 in accordance with 29 C.F.R. § 18.71(b)(1);" and that each party bears its own fees and expenses. Accordingly, the ALJ approved the parties' Settlement Agreement and dismissed the matter with prejudice. ALJ's Final Order Approving The Parties' Settlement Agreement (Mar. 11, 2016) in *Arvind Gupta v. Compunnel Software Group, Inc.*, ALJ No. 2011-LCA-045.

On March 22, 2016, Gupta filed with the district court a motion to reopen the prior case and an ex-parte emergency motion for injunctive relief. Gupta sought a court order to enjoin the ALJ, the Secretary of Labor, and/or any other authorized Department of Labor official or agency from discontinuing adjudication of the remanded case. Gupta also requested that the court set aside, vacate, or declare a nullity, the ALJ's March 11, 2016 Final Order approving the Settlement Agreement. A telephone conference occurred on March 28. The next day, Gupta moved to withdraw his motion, which withdrawal the court granted. *Compunnel Software Group v. Gupta & Perez*, 14 Civ. 4790 (SAS)(Court Order March 29, 2016).

In the case before us (ARB No. 16-056), the ARB has received:

- Gupta's Motion For Enlargement Of Time To File Petition For Review, Or To Proceed Otherwise (Mar. 22, 2016); Compunnel's Opposition To Motion For Enlargement Of Time To File Petition For Review, Or To Proceed Otherwise (Apr. 4, 2016);

- Prosecuting Party's Motion for Summary Reversal or Vacatur of ALJ's Dismissal Order, Alternatively, Petition for Review (Mar. 29, 2016)(indicating that ARB may construe motion as incorporating motion to withdraw Mar. 22, 2016 Motion); Compunnel's Opposition To Motion For Summary Reversal Or Vacatur [sic] Of ALJ's Dismissal Order; Alternatively, Petition For Review (Apr. 8, 2016); Prosecuting Party's Reply To Compunnel's Opposition To His Motion For Summary Reversal Or Vacatur Of ALJ's Dismissal Order; Alternatively, Petition For Review (Apr. 20, 2016);

- Prosecuting Party's Motion to Strike Compunnel's Exhibits (ARB-R-1 & ARB-R-3 to R-7) (Apr. 13, 2016); Compunnel's Opposition To Motion To Strike Compunnel's Exhibits (ARB-R-1 & R-3 to R-7) As Outside Record (Apr. 25, 2016); Prosecuting Party's "Reply" to Compunnel's "Opposition" To His Motion To Strike Compunnel's Exhibits (ARB-R-1, R-3 to R-7 (Apr. 27, 2016).

This 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 (2015). *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).

The regulations provide that if a party files a timely petition for review, the decision of the Administrative Law Judge (ALJ) shall be inoperative unless and until the Secretary issues an order affirming the decision, or, unless and until 30 calendar days have passed after the Secretary's receipt of the petition for review and the Secretary has not issued notice to the parties that the Secretary will review the ALJ's decision. 20 C.F.R. § 655.840, 655.845. Gupta filed a timely petition for review.

Gupta appeals the ALJ's dismissal of this case by contesting the validity of the Settlement Agreement, the sole basis for the ALJ's dismissal. Gupta's appeal rests entirely on collateral attacks against the Settlement Agreement, including fraud, duress, lack of consideration, lack of voluntariness, lack of initials on every page, and contradiction of public policy. The Board is an administrative body with only the authority emanating from statutes, implementing regulations, and delegations of authority.¹ Gupta points to no statute or regulation that authorizes the Board to adjudicate collateral attacks to a facially valid contract (i.e., a

¹ *See e.g., Gilbert v. Bauer's Worldwide Transport.,* 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) (Federal Circuit Court agreed with the Merit Systems Protection Board that the administrative law judge had no jurisdiction to review the Office of Personnel Management's discretionary decision pertaining to benefit rules)).

settlement agreement). We do not suggest that we can never review an ALJ's dismissal of a case involving settlement agreements under the INA, and we will not speculate as to every conceivable case where we may have authority to review the ALJ's dismissal of a case. In this case, as confirmed by Gupta's own motion, the Settlement Agreement appears valid on its face as it is signed, no party challenges the signatures, and the agreement expressly identifies this case as part of the settlement. Because Gupta raises only collateral attacks to the validity of the settlement agreement and does not raise any appealable issue, we lack jurisdiction and decline to accept his petition.

Accordingly, the petition for review is **DECLINED**. The above-listed motions are **DENIED** as moot. This matter is **DISMISSED** with prejudice.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge