

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
PORT ST. LUCIE DISTRICT OFFICE

Susan Norvell-Murphy,	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	OJCC Case No. 04-005503RDM
	)	
Place At Vero Beach,	)	Accident date: 11/18/2003
	)	
Employer,	)	Judge: Robert D. McAliley
	)	
and	)	
	)	
Cambridge Integrated Services, Inc.,	)	
	)	
Carrier/Servicing Agent.	)	
_____	)	

FINAL EVIDENTIARY ORDER

I find claimant reached a binding settlement pursuant to a mediation conference conducted June 24, 2008. As a consequence, the Petition for Benefits filed January 9, 2009, is dismissed with prejudice. Ostensively, an aspect of the relief sought by the employer/carrier (E/C) is to enforce settlement. To the extent doing so exceeds the jurisdiction of the Judge of Compensation Claims (JCC) this relief is denied as otherwise explained below.

STIPULATED FACTS

On June 24, 2008, the parties conducted a mediation settlement conference before Olivia Devonmille, a prior Judge of Compensation Claims (JCC). Claimant was represented by Ronald R. Rider and the employer/carrier (E/C) by Anthony M. Amelio.

A settlement was reached on all issues pursuant to section 440.20(11)(c). Claimant

recovered \$21,250.00. An attorney's fee of \$2,875.00 was to be deducted from this amount for Mr. Rider's attorney fee pursuant to section 440.34(1). Additionally, claimant was to reimburse Mr. Rider \$1,375.00 in costs allegedly advanced. Claimant also agreed to execute a voluntary resignation letter and a general release. It was agreed E/C would terminate the authorization for medical care the following day.

E/C sent proposed settlement papers to Mr. Rider on June 25, 2008. This paperwork was not processed by Mr. Rider and returned to defense counsel as expected. Hence, settlement papers were never submitted to the JCC for consideration.

On July 16, 2008, the carrier mailed a check directly to Mr. Rider for one half the gross settlement amount or \$11,375.00. A second check was issued by the carrier in the same amount and was mailed by the carrier to Ms. Norvell by mistake on August 11, 2008. The proceeds of this check were eventually placed in Mr. Rider's trust account. An escrow letter was sent to Mr. Rider instructing Mr. Rider to place the money in his trust account pending JCC approval of the settlement.

The reasoning behind making this advance payment, especially before having the settlement paperwork in hand, is unexplained. Of course, delivering a settlement check to counsel in this fashion precludes overlooking making payment after the settlement is approved by the JCC thereby possibly resulting in a penalty.

During this general timeframe Mr. Rider was being investigated by the Florida Bar. This investigation resulted in Mr. Rider's emergency suspension for the misappropriation of client funds. *The Florida Bar v. Rider*, Case Number SC08-2253 (Fla., December 23, 2008). Criminal charges are pending connected to Mr. Rider's alleged misappropriation. Payments made by the carrier in this case are among the funds that were stolen.

When papers were not returned to defense counsel, E/C filed a motion to enforce settlement. A hearing was conducted December 12, 2008, attended by claimant, but not Mr. Rider. Claimant made an oral motion to discharge Mr. Rider which was granted. A hearing on the motion to compel was postponed pending claimant obtaining another attorney.

On January 9, 2009, Michael K. Horowitz appeared for claimant and filed a Petition for Benefits (PFB). In her PFB claimant seeks a correction of average weekly wage, additional medical care and temporary disability benefits.

Eventually, E/C renewed its motion to compel. By way of an order entered September 28, 2010, I declined to rule on E/C's motion in summary fashion, instead requiring an evidentiary hearing although the scope of matters to be admitted into evidence remained to be seen.

#### PROCEDURAL STATUS

An evidentiary hearing was conducted to determine whether a binding settlement was reached. The underlying motion for summary final order is converted to a merits hearing on the January 9, 2009, PFB on the limited issue of whether a settlement defense requires its dismissal. If dismissal is not required, all other issues connected with this PFB are severed.

A preliminary evidentiary ruling was entered by an order mailed November 10, 2010. This preliminary evidentiary ruling is incorporated by reference.

I find the mediation privilege established at section 440.25(3) which continues to be invoked by E/C precludes claimant from testifying as to conversations between her and Mr. Rider. No evidence is presented suggesting that any impropriety during the mediation itself on the part of Mr. Rider constituted anything more than mere verbal pressure to settle.

Claimant asserts that misconduct on the part of Mr. Rider constitutes duress so as to void

the settlement contract. There is no evidence supporting claimant's argument that Mr. Rider was engaged in a scheme to misrepresent the law to his client to promote reaching a settlement and ultimately enable bilking that same client. Reaching this conclusion would entirely speculative.

Given the application of the mediation privilege, claimant is unable to show conduct on Mr. Rider's part that constituted duress to such a degree that it destroyed her free will. Even if it did, the case law that exists indicates avoiding an agreement on the basis of duress requires improper or corrosive conduct on the part of an opposing party. *Miami v. Kory*, 394 So. 2d 494, 497 (Fla. 3d DCA 1981).

Finally, I determine as a factual matter based on claimant's testimony in these proceedings as well as her statement during a conference conducted before me on December 10, 2008, that claimant was desirous of settling her case and was cheated by Mr. Rider after the agreement was reached.

#### PAYMENT

At the time the parties reached the settlement agreement, claimant was represented by counsel. JCC involvement is limited only to the question of whether the attorney's fee is appropriate. The amount of attorney's fees provided in the agreement itself complies with the sliding scale fee schedule. *See*, § 440.34(1), *Fla. Stat.* (2003). Had the settlement paperwork been submitted, it would have been approved.

I find E/C satisfied its obligation to pay settlement proceeds by mailing checks to Mr. Rider to be held in his trust account. Payment is deemed to have been made when E/C mails checks to claimant or the claimant's attorney. *Palm Beach County School Board v. Miller-Neil*, 674 So.2d 759 (Fla. 1st DCA 1996). Payment in advance to be held in trust pending completion of the settlement paperwork is not only common in workers' compensation but in many areas of

litigation and business dealings such as real estate, tort law, contract matters, etcetera.

Obviously E/C avoids the potential for paying the interest and penalty provisions of the law by handling payment in this manner . This procedure also furthers the quick and efficient delivery of compensation benefits in the form of settlement money. *See*, § 440.015, *Fla. Stat.* (2003).

#### CONCLUSIONS OF LAW

Because I find a valid settlement, pursuant to a mediation conference, was reached between the parties, this operates as a complete defense to the pending PFB filed January 9, 2009.

Although this may be a matter of semantics, a JCC does not have jurisdiction or authority to “enforce” a settlement agreement. *Metropolitan Dade County v. Rolle*, 661 So. 2d 124, 127 (Fla. 1st DCA 1995).

The law does not require a useless act. Therefore, it is pointless to submit further paperwork regarding the settlement especially given the intervening theft of all the settlement proceeds. However, I find an enforceable settlement was reached which also provided for the execution of a voluntary resignation and a general release. While E/C may waive this requirement, if it does not, it is incumbent upon E/C to apply to the civil court for enforcement by way of a rule nisi wherein the civil court, *inter alia*, may utilize its contempt powers to compel document completion pursuant to section 440.24(1), *Florida Statutes* (2010). *See, Jacobsen v. Ross Stores*, 882 So. 2d 431 (Fla. 1st DCA 2004) (holding a JCC has authority to determine whether a valid, binding settlement agreement was reached and if so to give effect to the settlement agreement).

WHEREFORE, it is

ORDERED AND ADJUDGED as follows:

- a. A valid settlement agreement was reached between the employer/carrier and the claimant at a mediation conference conducted June 24, 2008.
- b. The provision in the agreement providing for a cash payment was satisfied by a check issued by the employer/carrier being delivered to claimant's former counsel to be placed in that attorney's trust account.
- c. The enforceable terms of the settlement also provide that claimant execute a letter of resignation and a general release.
- d. Because a settlement was reached, the Petition for Benefits filed January 9, 2009, is dismissed with prejudice.

DONE AND ORDERED this 19th day of January, 2011, in Port St. Lucie, St. Lucie County, Florida.

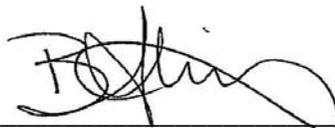


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I HEREBY certify that a true and correct copy of the foregoing has been mailed via U.S. Mail to all of the parties and emailed to the attorneys listed on this 19th day of January, 2011.



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Assistant to the Judge of  
Compensation Claims

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OJCC Number(s) 04-005503

Date Order Mailed/Emailed 1/19/11

Trial/Hearing dates opened 1/11/11 ; concluded 1/11/11

For Final Hearing or Expedited Final Hearing:

Dates of all petitions heard 1/9/09

OR

For Evidentiary Motion Hearing:

Type of Motion \_\_\_\_\_

Filing date of Motion heard \_\_\_\_\_

OR

For Fee Amount Hearing or Fee Entitlement Hearing

Date motion or verified petition filed \_\_\_\_\_

OR

For Appellate Fee or Remand Hearing

Date of Mandate \_\_\_\_\_

AND

If abbreviated final/fee order was issued and later vacated:

Date Abbreviated Order Entered: \_\_\_\_\_

Date Abbreviated Order Vacated: \_\_\_\_\_