

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Judens Joseph,
Employee/Claimant,

OJCC Case No. 19-005500NPP

vs.

Accident date: 1/8/2019

Prologistix Orlando/Broadspire,
Employer/Carrier/Serviceing
Agent.

Judge: Neal P. Pitts

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**FINAL EVIDENTIARY ORDER ON E/C'S MOTION
TO ENFORCE SETTLEMENT AGREEMENT**

THIS CAUSE came on for an evidentiary hearing on the 18th day of October, 2019, pursuant to the E/C's Motion To Enforce Settlement Agreement, filed with DOAH on September 10, 2019, to which the claimant has filed no written response but attended the hearing and objected to the motion. The issue to be resolved at this evidentiary hearing is whether the parties entered into an enforceable settlement agreement.

E/C's Exhibits:

1. E/C's Motion To Enforce Settlement Agreement, filed with DOAH on September 10, 2019;
2. Mediation agreement filed with DOAH on May 31, 2019;
3. Email dated May 31, 2019 from Mr. Charles Wade to Mr. Gregory Raub; and
4. Notice of Washout Settlement filed with DOAH on June 5, 2019.

Claimant's Exhibit:

1. None.

ANALYSIS OF THE LAW:

1. The law is clear that settlement agreements are highly favored and must be enforced wherever possible as a means to conserve judicial resources, *Robbie v. City of Miami*, 469 So.2d 1384 (Fla.1985); are governed by the law of contracts, *Nichols v. Hartford Ins. Co. of the Midwest*, 834 So.2d 217 (Fla. 1st DCA 2002); and are to be construed according to the parties' intent as demonstrated by the choice of words used in the agreement. *Gendzier v. Bielecki*, 97 So.2d 604 (Fla. 1957); *Ross v. Savage*, 63 So. 148 (Fla. 1913). While the law favors settlements and their enforcement, the evidence must nevertheless demonstrate that there was mutual agreement to all of the material terms. *Robbie v. City. Of Miami*, 469 So.2d 1384 (Fla. 1985).
2. It is basic to Florida contract law that the acceptance of an offer that results in an enforceable agreement must be: absolute and unconditional; identical with the terms of the offer; and in the mode, at the place, and within the time expressly and impliedly stated within the offer. *Nichols v. Hartford Ins. Co. of the Midwest*, 834 So.2d 217 (Fla. 1st DCA 2002). An acceptance must contain an assent or meeting of the minds to the essential terms contained in the offer. *Cheverie v. Geisser*, 783 So.2d 1115 (Fla. 4th DCA 2001). To be enforceable, an agreement must be sufficiently specific and reflect assent by the parties to all essential terms. *Williams v. Ingram*, 605

So.2d 890 (Fla. 1st DCA 1992). If there is no agreement as to all essential terms, such that if any essential term remains open and subject to future negotiation, there is no enforceable agreement. *See Hale v. Shear Express, Inc.*, 932 So.2d 514 (Fla. 1st DCA 2006). *Grimsley v. Inverrary Resort Hotel, Ltd.*, 748 So.2d 299 (Fla. 4th DCA 1999).

3. Particularly applicable to the case sub judice, is the law that a party seeking to enforce a settlement agreement must establish that the non-moving party's attorney had clear and unequivocal authority to settle on the party's behalf. *See Fivecoat v. Publix Super Markets, Inc.*, 928 So.2d 402 (Fla. 1st DCA 2006); *Vantage Broad. Co. v. WINT Radio, Inc.*, 476 So.2d 797 (Fla. 1st DCA 1985). An attorney's subjective belief that he or she had the authority from the client to settle does not alone establish such authority. *See Weitzman v. Bergman*, 555 So.2d 448 (Fla. 4th DCA 1990). This burden is met only if it is established that the attorney had clear and unequivocal authority to settle on the client's behalf. *See Cross-Aero Serv. Corp.*, 326 So.2d 249 (Fla. 3rd DCA 1976).

FINDINGS OF FACT:

After receiving live testimony from Mr. Wade, Mr. Raub, and the claimant, having reviewed the documentary evidence, having heard argument of counsel, and otherwise being duly advised in the premises, I make the following findings of fact.

1. I have jurisdiction over the parties and the subject matter.
2. The parties attended a mediation conference on May 17, 2019, at which time the claimant met Mr. Wade for the first time. Prior to that, he had dealings with another person with Mr. Masnikoff's office. According to the claimant's testimony, he was not aware that Mr. Wade would be the attorney handling the mediation and was unsure whether he could trust him. Therefore, he was not willing to enter into a signed mediation agreement at the hearing.
3. At some point an offer was made of \$8,875.00, inclusive of attorney's fees and costs. According to the claimant's testimony, he was not aware that this amount had been offered. Rather, the amount he received from the mediator was \$3,437.50. According to his testimony, he was not aware that a separate attorney's fee of \$3,000.00 was being paid for \$1,000.00 in additional indemnity benefits.
4. Mr. Raub testified that the E/C made an offer to settle the entire claim for \$8,875.00, inclusive of attorney's fees and costs. There was no testimony from Mr. Raub that this figure was to be broken down into separate parts. The May 31, 2019 email sent by Mr. Wade to Mr. Raub indicated that the settlement was for \$8,875.00, inclusive.
5. A written mediation agreement dated May 31, 2019 reflected a washout settlement of \$4,875.00, inclusive of attorney's fees of \$975.00 and costs of \$462.50. The agreement further provided that

the E/C would pay the claimant \$1,000.00 in past due indemnity benefits and an E/C paid fee of \$3,000.00 for securing these benefits, the claimant would execute a general release and a voluntary resignation/separation agreement, and all benefits would cease that day. The mediation agreement specifically noted that “claimant advised that his attorney has permission to execute the settlement agreement on his behalf.”

6. The claimant did not sign this agreement. Nor was there is evidence that the claimant participated in any phone conversation that day. Rather, the agreement was signed by his attorney on the claimant’s behalf. There was no confirming email from the claimant to his attorney providing confirmation of the acceptance of the settlement according to the terms reflected in the May 31, 2019 written agreement. Therefore, I find that this is not an actually written mediation agreement that was signed by the claimant.
7. Mr. Wade testified that he had his client’s permission to settle the case on his behalf based upon the terms set forth in the mediation agreement. This included specific authority regarding the separate attorney’s fee of \$3,000.00 being paid for payment of \$1,000.00 in additional indemnity benefits.
8. I have given this matter a great deal of thought. The primary conflict which the undersigned is compelled to resolve is whether the claimant provided his attorney with clear and unequivocal authority settle for

- workers compensation claim under the terms reflected on the May 31, 2019 mediation which the claimant did not sign.
9. I am not persuaded by the testimony that the claimant was aware of the entire terms of this agreement. However, I find both Mr. Wade's and the claimant's testimony to be believable. But, because there is no objective corroborating evidence or independent witnesses which tilts the balance in favor of one witnesses' testimony over the other, I simply am unable to believe one over the other.
 10. I note that the claimant was not copied on the May 31, 2019 email between Mr. Wade and Mr. Raub. Nor is there any email between the claimant and the Masnikoff law firm which provides a detailed explanation of the proposed terms of the settlement agreement and explicit authorization from the claimant to settle the entire claim on the terms of the May 31, 2019 written mediation agreement.
 11. Based upon the foregoing findings, I fall back on the law that the party seeking to enforce a settlement agreement must establish that the non-moving party's attorney had clear and unequivocal authority to settle on the party's behalf. *See Fivecoat v. Publix Super Markets, Inc.*, 928 So.2d 402 (Fla. 1st DCA 2006); *Vantage Broad. Co. v. WINT Radio, Inc.*, 476 So.2d 797 (Fla. 1st DCA 1985). An attorney's subjective belief that he or she had the authority from the client to settle does not alone establish such authority. *See Weitzman v. Bergman*, 555 So.2d 448 (Fla. 4th DCA 1990). This burden is met only

if it is established that the attorney had clear and unequivocal authority to settle on the client's behalf. *See Cross-Aero Serv. Corp.*, 326 So.2d 249 (Fla. 3rd DCA 1976).

12. I find that the E/C has failed to meet its burden of proof to establish that Mr. Wade and/or Mr. Masnikoff had clear and unequivocal authority to settle on the client's behalf on all essential terms reflected in the May 31, 2019 agreement. Therefore, I find that the parties did not reach a binding and enforceable agreement regarding the settlement agreement which the E/C is seeking to enforce.

Based upon the foregoing, it is

CONSIDERED, ORDERED, AND ADJUDGED that E/C's Motion To Enforce Settlement, filed with DOAH on September 10, 2019, is hereby denied.

DONE AND SERVED this 18th day of October, 2019, in Altamonte Springs, Seminole County, Florida.



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