

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

Eliezier Andino,)	
Employee/Claimant,)	
)	Judge: Neal P. Pitts
vs.)	
)	OJCC Case No. 12-027809NPP
Hy-Tech Recovery and Towing, LLC/,)	
Employer/ Carrier/Servicing Agent.)	Accident date: 8/7/2012
_____)	

**FINAL EVIDENTIARY ORDER ON EMPLOYER'S
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

THIS CAUSE came on for an evidentiary hearing on the 10th day of June, 2013, pursuant to the Employer's Motion To Enforce Settlement Agreement, filed with DOAH on May 5, 2013, relating to a settlement agreement which the Employer contends was reached between counsel and memorialized in an email dated April 8, 2013 and a letter dated April 9, 2013. The claimant filed no written response to the Employer's motion.

The claimant failed to appear for the hearing which was noticed to commence at 1:00 p.m. on Monday, June 10, 2013. Claimant's counsel, Angelic R. Shakir-Kirkconnell, Esq., appeared live. The Employer was represented by Troy J. Matthew, Esq., who appeared live. There is no carrier involved and no representative from the employer attended the hearing.

Live testimony was received from Angelic R. Shakir-Kirkconnell, Esq. Documentation was marked and admitted into

evidence as follows:

JUDGE'S EXHIBITS:

1. Petition For Benefits, filed with DOAH on December 6, 2012;
2. Order To Show Cause For Failure To Attend Mediation Conference, entered on March 12, 2013;
3. Order Discharging Order To Show Cause For Failure To Attend Mediation Conference And Dismissing Petition For Benefits Without Prejudice, entered on April 8, 2013; and
4. Child support documentation from Florida Department Of Revenue.

EMPLOYEE/CLAIMANT'S EXHIBITS:

1. Employer's Motion To Enforce Agreement filed with DOAH on July 25, 2013; and
2. Email dated April 8, 2013 from Troy Matthew, Esq., to Angelic R. Shakir-Kirkconnell, Esq.;
3. Letter dated April 9, 2013 from Scott J. Sternberg, Esq. to Matthew J. Troy, Esq.; and
4. Letter dated April 9, 2013 from Matthew J. Troy, Esq. to Scott J. Sternberg, Esq. enclosing proposed settlement documents.

ANALYSIS OF THE LAW:

1. The law is clear that settlement agreements are

highly favored and must be enforced wherever possible; *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). This includes settlement agreements that are reached between the parties through their attorneys. *Fivecoat v. Publix Super Markets, Inc.*, 928 So.2d 402 (Fla. 1st DCA 2006). An oral settlement is binding and enforceable. See *Bonagura v. Home Depot*, 991 So.2d 902 (Fla. 1st DCA 2008).

2. An objective test is to be used to determine whether the claimant accepted the employer's offer and whether the settlement is enforceable. *King v. Bray*, 867 So.2d 1224 (Fla.5th DCA 2004). 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).

3. A party seeking to enforce a settlement agreement must establish that the resisting party's attorney had clear and unequivocal authority to settle on the client'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). 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). An attorney's subjective belief that he or she had the authority to settle does not alone establish such authority. See *Weitzman v. Bergman*, 555 So.2d 448 (Fla. 4th DCA 1990).

After receiving live testimony from Angelic R. Shakir-Kirkconnell, Esq. 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 find that the claimant retained the law firm of Scott J. Sternberg & Associates, P.A. to represent him in the workers' compensation claim

involving Hy-Tech Recovery and Towing, L.L.C. Pursuant to that representation, on December 6, 2012 a petition for benefits was filed with DOAH on behalf of the claimant by such law firm. This petition alleged that the claimant had suffered a compensable accident on August 7, 2012 while working for Hy-Tech Recovery and Towing, L.L.C., resulting in injuries to the claimant's neck and left shoulder. No carrier was listed in the petition.

2. After filing the petition, a mediation conference was scheduled for March 12, 2013. The claimant failed to attend such mediation conference, which resulted in the entry on March 12, 2013 of the Order To Show Cause For Failure To Attend Mediation Conference. This order set a hearing for April 8, 2013 for the claimant to appear to explain his absence from the mediation.
3. Ms. Angelic R. Shakir-Kirkconnell, Esq. testified that shortly before the hearing on the Order To Show Cause, the employer made a settlement offer of \$500.00, inclusive of attorney's fees, to completely resolve the ongoing claim. She

further testified that she discussed with the claimant the employer's settlement offer of \$500.00.

4. Finally, as a result of these discussions, Ms. Kirkconnell testified that she had clear unequivocal authority to settle on her client's behalf for \$500.00, inclusive of attorney's fees and costs. I find that Ms. Kirkconnell testified in a clear and straight forward manner and I find her to be believable and credible. Therefore, I accept her testimony on this issue.
5. As stated above, the employer bears the burden to establish that Ms. Kirkconnell, as the claimant's attorney, had clear and unequivocal authority to settle on her client's behalf. Based upon the greater weight of the evidence, I conclude that the employer has met that burden through the testimony of Ms. Kirkconnell.
6. Thus, I find that as a result of the discussions between the claimant and Ms. Kirkconnell, Ms. Kirkconnell had clear and unequivocal authority from the claimant to settle his workers' compensation claim for \$500.00, inclusive of

attorney's fees and costs. From this amount, \$100.00 would be deducted for the statutory attorney's fee and \$100.00 would be deducted for costs. The terms of this agreement were memorialized in the letter dated April 9, 2013 from Scott J. Sternberg, Esq. to Matthew J. Troy, Esq.

7. Therefore, I find that the claimant and the employer, through their counsel, freely and voluntarily reached a binding and enforceable settlement agreement. I find the terms of the settlement agreement to be clear, unambiguous, not susceptible to varied interpretation, nor subject to any objective contingencies.
8. I find that the claimant agreed to a complete washout of his claim for \$500.00, inclusive of all attorney's fees and costs, and from this amount, the claimant would net \$300.00, before deductions for child support. The agreement further provides that the claimant was to sign a resignation from employment and a general release.
9. I find that the terms of the settlement agreement

are sufficiently specific and reflect assent by all of the parties to all essential terms. There is no latent ambiguity which requires interpretation by parol evidence. There is no evidence that the claimant was forced or pressured into this agreement. Rather, the claimant was represented by legal counsel who was available to discuss with him the ramifications of the mediation agreement.

10. Based upon the attached documentation, I find that there is an outstanding child support obligation in the amount of \$6,422.89.

Based upon the foregoing, it is

CONSIDERED, ORDERED, AND ADJUDGED as follows:

1. Employer's Motion To Enforce Settlement Agreement, filed with DOAH on May 6, 2013, is hereby granted.
2. I find that the proposed guideline attorney's fee of \$100.00 on a settlement of \$500.00 to be reasonable and in accordance with the statutory formula, and therefore, it is approved.
3. There is child support paperwork filed with DOAH which indicates that there is an outstanding child support obligation of \$6,422.89 arising from Broward County,

Florida. Based upon this figure, from this amount, it is appropriate that the sum of \$150.00 be withheld and sent to the appropriate child support authority. The Employer is directed to withhold the sum of \$150.00 from the claimant's net settlement and forward that amount to the appropriate child support enforcement authority.

4. The claimant's attorney is seeking reimbursement of \$100.00 as costs; thereby making the claimant's net settlement to be \$300.00. The costs of \$100.00 are subject to verification by Ms. Kirkconnell with the filing of the Cost Data Sheet and accompanying itemization. Approval of such costs will be determined upon the filing of the appropriate documentation.
5. Should the claimant refuse to sign the settlement paperwork marked as Employer's Exhibit 4, then upon the payment of the consideration above, this Order shall operate as a discharge for any and all past and future liability against the employer to provide the claimant with any benefits under Chapter 440, including but not limited to, medical and indemnity benefits for any injury or condition suffered as a result of the alleged industrial accident of August 7, 2012.
6. This order is not intended to nor shall it be construed

to operate as a discharge of any claims which the claimant has against the Employer rising outside of the provisions of Chapter 440.

7. All pending petitions for benefits are dismissed with prejudice.

DONE AND ORDERED in Orlando, Orange County, Florida, on the 11th day of June, 2013.



Neal P. Pitts

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