

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

Samuel Hyppolite,
Employee/Claimant,

OJCC Case No. 14-009608NPP

vs.

Accident date: 4/4/2014

Coastal Delivery, and Orlando Estate
Auction/
Employer/Carrier/Servicing Agent.

Judge: Neal P. Pitts

**FINAL EVIDENTIARY ORDER ON MOTION
TO ENFORCE SETTLEMENT AGREEMENT**

THIS CAUSE came on for an evidentiary hearing on the 14th day of October, 2014, pursuant to the Employers' Motion to Find Valid, Enforceable Agreement/ Motion To Enforce Settlement, filed with DOAH on September 29, 2014. For purposes of this order, the term "Employers" refers to Coastal Delivery, Inc. and Orlando Estate Auction, LLC. The claimant did not file a written response to the Employer's motion. The claimant is represented by Paul N. White-Davis, Esq., who appeared at the hearing on behalf of his client. The claimant failed to appear for the hearing which was noticed to commence at 10:30 a.m., Tuesday, October 14, 2014. The Employers are represented by W. Rogers Turner, Esq., who appeared in person. There is no carrier. No employer representative attended the hearing.

The claimant did not attend the hearing. Despite the

claimant's absence, I find that it is proper to proceed with the hearing in the absence of the claimant. In doing so, I accept the testimony of Mr. White-Davis that his office provided the claimant with timely notice of the hearing and in fact he spoke to the claimant prior to this hearing and informed him about the hearing and requested that he be available to testify by phone. Four attempts were made before the hearing commenced to reach the claimant telephonically. The telephone number called was the same phone number that the claimant had used to communicate with Mr. White-Davis just prior to the hearing. Thus, I find that the claimant has elected voluntarily not to attend the hearing.

Live testimony was received from Mr. Turner and Mr. White-Davis, Esq. Additional evidence in the form of documentation was marked and admitted into evidence as follows:

JUDGE'S EXHIBITS:

1. Notice of Voluntary Withdrawal Of Petition For Benefits And Request For Cancellation Of 10/14/2015 Order to Show Cause And 10/15/2014 Final hearing;
2. Final Evidentiary Order entered on August 13, 2014;
3. Petition For Benefits filed on April 29, 2014;
4. Petition For Benefits filed on May 14, 2014; and
5. Notice Of Hearing filed with DOAH on October 10, 2014.

JOINT EXHIBIT:

1. Composite exhibit containing emails and correspondence by and between Mr. Turner and Mr. White-Davis.

EMPLOYER EXHIBITS:

1. Motion to Find Valid, Enforceable Agreement/ Motion To Enforce Settlement, filed with DOAH on September 29, 2014; and
2. Composite exhibit consisting of a letter dated September 22, 2014 to Mr. White-Davis from Mr. Turner, enclosing proposed settlement documentation.

EMPLOYEE/CLAIMANT EXHIBIT:

1. Email from the claimant to Mr. White-Davis dated September 27, 2014.

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 Mr. Turner and Mr.

White-Davis and 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 subject matter and the parties.
2. I find that the claimant retained the law firm of Morgan, White-Davis & Martinez, P.A. to represent him in a workers' compensation claim involving his employers, Coastal Delivery, Inc and Orlando Estate Auction, LLC. Pursuant to that representation, on April 29, 2014 and May 14, 2014, respectively, petitions for benefits were filed with DOAH on behalf of the claimant by such law firm. The petitions alleged that the claimant had suffered a compensable accident on April 4, 2014 resulting in injuries to the claimant's cervical, thoracic, and lumbar spine.
3. After the filing of the petitions, there were settlement discussions between Mr. White-Davis and Mr. Turner. After ongoing negotiations, the counsel for the parties agreed to the following:
 - a. Washout settlement of the entire case, medicals closed, in exchange for \$6,542.00 inclusive of attorney's fees and costs, less the \$2,000.00 advance, leaving a balance due of \$4,542.00, from

which the claimant would pay his attorney a statutory attorney's fee and costs;

b. Exchange of mutual general release signed by both parties;

c. The claimant to sign a voluntary resignation from employment; and

d. Each party bear their own attorney fees and costs.

4. I find that Mr. White-Davis had clear and unequivocal authority from his client to settle the entire claim based upon the above essential terms and conditions. I further find that based upon this authority from the claimant, Mr. White-Davis advised the Employers that the claimant had accepted the offer.

5. Specifically, I find that by letter dated September 24, 2014 from the claimant to Mr. White-Davis, the claimant expressed in writing his acceptance of the offer which included a mutual separation of the employment relationship, termination of the employment agreement, execution of a general release including the claim for unpaid overtime, and a voluntary resignation.

6. After reaching an agreement as to the essential terms of the contract, the employers forwarded the settlement documents to Mr. White-Davis. Mr. White-Davis in turn

forwarded the documentation to the claimant.

7. The claimant never signed the paperwork and by letter and a separate email dated September 27, 2014 informed Mr. White-Davis that he did not want to go through with the settlement agreement. Rather, he indicated that he had retained a separate attorney for the overtime and retaliation claim and now would no longer settle for less than \$15,000.00.
8. I find that the claimant and the employers, 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. Specifically, I find that the claimant agreed to a complete washout of his claim for \$6,542.00, inclusive of attorney's fees and costs, less the \$2,000.00 advance already paid. The agreement further provides that the claimant was to sign a resignation from employment and both parties would sign and deliver a general release in which both parties would mutually release one another from any and all claims, including pursuing any action for fraud or misrepresentation.
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.

10. Based upon the child support documentation filed with DOAH on September 22, 2014, I find that there is no outstanding child support arrearage.

Based upon the foregoing, it is

CONSIDERED, ORDERED, AND ADJUDGED as follows:

1. Employer's Motion to Find Valid, Enforceable Agreement/ Motion To Enforce Settlement, filed with DOAH on September 29, 2014, is hereby granted. The claimant is hereby directed to sign the appropriate settlement documentation, marked as Employer's Exhibit 2, including the child support affidavit and the General Release, within 20 days from the date of this order.
2. The Employers shall execute a reciprocal General Release which releases the claimant from any and all claims, and provide the executed agreement to claimant's counsel within 20 days from the date of this Order.
3. I find that the proposed guideline attorney's fee of \$1,231.30 on a settlement of \$6,542.00 to be reasonable and in accordance with the statutory formula, and therefore, it is approved once the appropriate Attorney's

Fee Data Sheet supporting its approval has been filed by Mr. White-Davis. If costs are sought, I cannot approve those costs until the appropriate documentation has been filed.

4. I find that there is no child support arrearage. Therefore, no child support needs to be deducted from the claimant's net settlement.
5. Should the claimant refuse to sign the settlement paperwork marked as Employers' Exhibit 2, then upon the payment of the consideration above and the delivery of a general release signed by the Employers, this Order shall operate as a discharge for any and all past and future liability against the employers 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 April 4, 2014.
6. Should the Employers fail or refuse to sign and deliver a General Release which releases the claimant from all liability for any and all claims and actions, including any claims or affirmative defenses relating to fraud and/or misrepresentation, then the settlement and the terms of this order shall be considered null and void and

have no legal effect.

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

DONE AND ORDERED in Orlando, Orange County, Florida, on the 14th day of October, 2014, and electronically mailed to counsel.

Neal P Pitts

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