



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,
Complainant,

v.

Docket No. 16-0006

ELOY DEL TORO,
Respondent.

ORDER OF DISMISSAL

This matter is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq. (“the Act”), for the purpose of determining whether Respondent's late-filed notice of contest (“NOC”) should be dismissed. The issue presented is whether an informal settlement agreement signed by both parties herein is final and binding, and thus bars the Respondent from contesting the citations. After careful consideration of all submissions in this case, the Court concludes that it does, and therefore, the NOC must be dismissed.

BACKGROUND

On September 9, 2014, pursuant to section 9(a) of the Act, the Corpus Christi Area Office of the Department of Labor’s Occupational Safety and Health Administration (OSHA) issued Respondent, Eloy Del Toro, a Citation and Notification of Penalty (citation). (*See* Complainant’s Supplemental Opposition to Relief under Rule 60(b), Exhibit A.) The citation consisted of three serious items and proposed penalties of \$5,200. (*Id.*) Respondent subsequently signed an informal settlement agreement on December 4, 2014, which OSHA signed on December 5, 2014, disposing of all issues in dispute, and importantly, in Paragraph 5 of that agreement, Respondent expressly waived its rights to contest the citation and penalties, as modified by the informal settlement agreement. (Complainant’s Supplemental Opposition to Relief under Rule 60(b), Exhibit B.) Notwithstanding this waiver, over a year later, Respondent subsequently filed a NOC with the Commission, on December 29, 2015.

DISCUSSION

Settlement agreements are contracts. As such, they are binding and enforceable under familiar principles of contract law, and are not subject to unilateral rescission. *Phillips, 66 Co.*, 16 BNA OSHC 1332, 1336 (No. 90-1459, 1993). Courts have long favored voluntary resolution of litigation in order to conserve judicial resources. *See Lewis v. S.S. Baume*, 534 F2d 1115, 1122, (5th Cir.1979). Further, to allow employers to unilaterally withdraw from previously agreed-upon settlements would deprive the Secretary of the finality of settlement agreements necessary for the efficient enforcement of the Occupational Safety and Health Act of 1970. *See Pennsylvania Steel Foundry & Machine Company v. Secretary of Labor*, 13 BNA OSHC 1417, (3rd Cir.1987) and *Secretary of Labor v. Aerlex Corp.*, 13 BNA OSHC 1197 (No. 85-1257, 1987). Also, the Commission encourages settlements of disputes between the parties. *See* Commission Rule 100(a), 29 CFR § 2200.100(a).

There are some exceptions to the finality of settlement agreements. Settlements entered into under duress, harassment, or overbearing conduct can be invalidated. *Lewis, supra* at 1122. Here, however, Respondent's NOC does not assert it entered into the settlement agreement due to duress, harassment, or overbearing conduct on the part of OSHA. To the contrary, the NOC indicates Respondent was making payments pursuant to the settlement agreement but "due to financial difficulties I could no longer make payments. I would like for you to give me the opportunity to reinstate a settlement agreement. I just started working and can make arrangements on the cases." Therefore, duress, harassment, or overbearing conduct, are not implicated here. Thus, the preponderance of the evidence demonstrates there was a valid binding agreement entered into between the parties, and as such, Respondent waived his right to contest the citations herein. Accordingly,

IT IS HEREBY ORDERED THAT Respondent's late notice of contest is **DISMISSED**.

SO ORDERED THIS 10th day of May, 2016.

/s/
JOHN B. GATTO, Judge