



In the Matter of:

**UNITED STATES DEPARTMENT
OF LABOR, OFFICE OF FEDERAL
CONTRACT COMPLIANCE PROGRAMS,**

ARB CASE NO. 02-009

ALJ CASE NO. 99-OFC-11

PLAINTIFF,

DATE: April 30, 2002

v.

BEVERLY ENTERPRISES, INC.,

DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**FINAL ADMINISTRATIVE ORDER APPROVING
CONSENT DECREE AND ORDER**

This case arises under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act. 43 Fed. Reg. 49240 (1978), 3 C.F.R. Part 230, *reprinted in* 42 U.S.C. § 2000e note (1999); 29 U.S.C. § 793 (1999); 38 U.S.C. § 4212 (1999). Plaintiff Office of Federal Contract Compliance Programs ("OFCCP") filed a complaint alleging that Beverly Enterprises, Inc. ("Beverly") failed to comply with its contractual obligations by refusing to submit to OFCCP the written affirmative action programs ("AAPs") for Beverly's Fort Smith, Arkansas headquarters. OFCCP had requested the documents in preparation for a compliance review of the facility. Beverly asserted that OFCCP violated the Fourth Amendment to the U. S. Constitution in selecting Beverly's facility for review. Following limited discovery and a hearing conducted pursuant to the expedited procedures contained in 41 C.F.R. §§ 60-30.31 – 60-30.-34, the ALJ issued a Recommended Decision and Order finding that Beverly had violated its obligations under the federal programs at issue.

Upon review of the ALJ's Recommended Decision, the Administrative Review Board ("Board") affirmed the ALJ's finding that Beverly had violated its contractual obligations. *OFCCP v. Beverly Enterprises Inc.*, ARB No. 99-112, ALJ No. 1999-OFC-00011 (ARB Sept. 1, 1999). Upon appeal to the U.S. District Court for the District of Columbia, the court affirmed the Board's

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

determination that Beverly had violated its obligations and remanded the case to determine whether Beverly and its subsidiaries are a single entity so that the subsidiaries may be sanctioned for the actions of the parent company. *Beverly Enterprises, Inc. v. Herman*, 130 F. Supp.2d 1 (D. D.C. 2000). The Board, in turn, remanded the case to the Office of Administrative Law Judges for further proceedings in accordance with the district court's order. *OFCCP v. Beverly Enterprises, Inc.*, ARB No. 01-028, ALJ No. 1999-OFC-11 (ARB Jan. 31, 2001).

On November 5, 2001, the ALJ issued a Recommended Decision and Order on Remand ("R. D. O. II"). *OFCCP v. Beverly Enterprises, Inc.*, ALJ No. 1999-OFC-11. Beverly filed exceptions to the R. D. O. II with the Board pursuant to 41 C.F.R. §§ 60-30.28; 60-250.65(b); 60-741.65(b).

The parties have now submitted a consent decree settling all outstanding issues.^{2/} As provided at page 2 of the Consent Decree, "[t]his Consent Decree shall constitute the final Administrative Order in this case, and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board." Furthermore, by entering into this decree, the parties waive any further procedural steps and waive any right to challenge the validity of the findings and order in the Consent Decree. Consent Decree at 3. Accordingly, the Consent Decree is approved and is hereby entered as the final administrative order in this case. *Accord OFCCP v. Jacksonville Shipyards, Inc.*, ARB No. 97-116, ALJ No. 89-OFC-1 (ARB Sept. 25, 1998); *OFCCP v. USAIR, Inc.*, No. 88-OFC-17 (Sec'y June 30, 1992); *OFCCP v. Louisville Gas & Electric Co.*, 88-OFC-12 (Spec. Ass't to Ass't Sec'y May 28, 1992); *OFCCP v. Norfolk and Western Railway Co.*, No. 90-OFC-1 (Spec. Ass't to Ass't Sec'y Nov. 22, 1991); *OFCCP v. Interco, Inc.*, No. 86-OFC-2 (Sec'y July 31, 1989). *See also* 41 C.F.R. §§ 60-30.13; 60-250.65(b); 60-741.65(b).

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

^{2/} On March 25, 2002, the Board issued an Order to Show Cause. Pursuant to the parties' request, the Board hereby withdraws this Order.