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Issue Date: 02 April 2008Case No. 2007-WTW-2

IN THE MATTER OF:

NATIONAL PUERTO
RICAN FORUM, INC.
Complainant

v.

U.S. DEPARTMENT OF LABOR,
Respondent

ORDER GRANTING RESPONDENT'S MOTION FOR ENTRY OF JUDGMENT

This matter arises under the Welfare-to-Work grant provisions of Title IV, Part A of the Social Security Act, 42 U.S.C. § 603(a)(5), and the implementing regulations at 20 C.F.R. Part 645. On June 7, 2007, I issued an Order scheduling the matter for hearing on July 5, 2007, in Washington, D.C. This hearing was cancelled by an Order dated June 25, 2007, after the Respondent requested that its appeal be decided on the record, without the necessity of a hearing. I advised the parties that the Complainant's opening brief would be due no later than July 18, 2007, and the Respondent's response brief would be due no later than August 8, 2007.

On August 9, 2007, I issued an Order directing the Complainant to show cause as to why its request for a hearing challenging the Grant Officer's final determination should not be dismissed on grounds of abandonment, and judgment entered on behalf of the Grant Officer, after the Complainant failed to submit a written brief as directed by my June 25, 2007 Order. On August 28, 2007, the Complainant submitted a response, essentially arguing that it had already submitted a detailed response to the audit report in response to a previous Order by Administrative Law Judge Thomas Burke. On August 29, 2007, counsel for the Respondent submitted a reply, arguing that the Complainant did not file a brief as directed by the Court, and requesting that the matter be dismissed, and judgment entered on behalf of the Grant Officer.

After speaking with the parties on September 11, 2007, I advised them that I regarded the Complainant's failure to respond to my Order directing the parties to file briefs, or to request a continuance to do so, as a serious omission on the Complainant's part, but not one that justified the entry of a judgment against the Complainant for over $400,000. I gave the Complainant until close of business on September 26, 2007 to submit its brief, and the Respondent until close of business on October 31, 2007 to submit its brief. The Complainant was specifically reminded that any further unexcused failure to comply with the Order to submit a brief could result in dismissal of the request for hearing and entry of judgment in favor of the Grant Officer.

The Complainant did not file a brief as directed, and on November 21, 2007, the Respondent filed its "Grant Officer's Motion for Entry of Judgment," arguing that, by failing to file a brief, the Complainant had failed to rebut any of the findings made by the Grant Officer in his final determination, and thus had not satisfied its burden of persuasion on any issue. On December 6, 2007, I issued a second Order to show cause, providing the Complainant ten days to show cause as to why its request for a hearing challenging the Grant Officer's final determination in this matter should not be dismissed on grounds of abandonment, and judgment entered on behalf of the Grant Officer.

The Complainant did not file a brief as directed, and on December 19, 2007, I spoke with Mr. Stephen Rosario, on behalf of the Complainant, and Mr. Peter Nessen, Esq., on behalf of the Respondent, by telephone conference. The parties acknowledged that settlement negotiations were ongoing, and that offers and counteroffers had been exchanged. Nevertheless, Mr. Nessen argued that Mr. Rosario knew that his brief was due, or that a request for an extension needed to be filed, as he had done in the past. Mr. Nessen argued that Mr. Rosario had ignored a court order, and that the Complainant should not get a third bite at the apple by being allowed to file a brief and avoid entry of judgment.

Mr. Rosario, on behalf of the Complainant, stated that it was his impression that the Complainant could avoid having to go through the Court proceedings, including the filing of a brief, because of the ongoing settlement negotiations. Mr. Rosario stated that the Complainant had provided all of the records requested by the Respondent, and he believed that they were engaging in good faith negotiations.

At the conclusion of the conference call, I directed Mr. Rosario to submit a written response to my December 6, 2007 Order to show cause by December 29, 2007; Mr. Nessen was provided time to file a response.

Mr. Rosario submitted his response on December 28, 2007, again stating that the Complainant intended to avoid judicial proceedings in favor of a settlement, and outlining the course of the settlement negotiations. Mr. Rosario stated that the Complainant wished to avoid having to close down, and wished to continue and conclude settlement negotiations, so that plans could be implemented that would help the Complainant to survive. Mr. Rosario requested that the Court dismiss the Respondent's motion, or in the alternative hold judgment in abeyance until settlement negotiations were concluded.

Mr. Nessen submitted his response on January 4, 2008, stating that the Respondent did not object to holding judgment in abeyance pending the conclusion of settlement negotiations, provided that the Court agree to enter judgment in favor of the Respondent when the Respondent informed the Court that settlement negotiations had ended, and not to grant the Complainant a third opportunity to file a brief. Mr. Nessen took issue with Mr. Rosario's claim that he surprised the Respondent when he filed the motion for entry of judgment, and Mr. Rosario's claim that the Respondent believed that the ongoing settlement negotiations negated its obligation to file a brief.

On January 10, 2008, I issued an Order staying entry of judgment pending the conclusion of the parties' settlement negotiations. However, I did not agree in advance to enter judgment in favor of the Respondent when the Respondent advised that the discussions had ended. I denied the Respondent's motion for entry of judgment.

By letter dated February 25, 2008, Mr. Stephen Rosario, the Chairman of the National Puerto Rican Forum, Inc., advised that, "after months of significant discussions about the future of NPRF and its herculean efforts to keep the NPRF alive," the Board of Directors had formally concluded that it would be in the organization's best interest to dissolve the corporation. Mr. Rosario stated that the Board had concluded that it could not support the obligation of the debt assessed by the Department of Labor, and that although the NPRF had made a number of "significant and reasonable" offers of settlement to the DOL, it had heard nothing from DOL for over two and a half months in response. Mr. Rosario represented that this lack of response, and uncertainty over the resulting obligation, was a significant factor in the Board's decision to dissolve the organization, as well as the current difficult funding environment, and the departure of the NPRF Executive Director. Thus, Mr. Rosario advised that NPRF was withdrawing all offers to make restitution on the DOL obligation.

By letter dated March 6, 2008, Mr. R. Peter Nessen, Esq., counsel for the DOL, argued that Mr. Rosario's letter acted as a "withdrawal" of the Complainant's request for appeal. Mr. Nessen argued that Mr. Rosario's statement that NPRF cannot afford to support the debt obligations imposed on it by the DOL can only be interpreted as an admission that it cannot succeed in its appeal on the merits, and will inevitably be required to pay the amount the DOL is owed. Mr. Nessen asked that I either treat the appeal as withdrawn, or grant the DOL's motion for entry of judgment.

On March 10, 2008, I issued an Order directing the Complainant to show cause why judgment should not be entered in favor of the Respondent.

On March 24, 2008, Mr. Rosario submitted a letter in response to my Order. Mr. Rosario stated that the Complainant disputed the Respondent's position that its February 25, 2008 letter acted as a "withdrawal" of its appeal. He also stated that the Complainant did not concede the Respondent's contention that it could not succeed on appeal. But he stated that the Board of Directors had determined that it would be an inappropriate expenditure of funds to hire legal counsel to pursue the matter.

On March 28, 2008, Mr. Nessen argued, first, that the Complainant's response was four days late, an unexcused delay that was itself cause for entry of judgment. Mr. Nessen also argued that Mr. Rosario's letter reflects that the Complainant intended to dissolve, and not to take any further action with respect to the underlying merits of the case. He noted that the Complainant stated that it had no intention of seeking legal counsel, which it stated was absolutely necessary to pursue the case. Mr. Nessen characterized this as a clear admission of abandonment. Mr. Nessen stated that the Complainant has in essence asked the Court to do nothing: it will not pursue the case, but does not want to see judgment entered against it. He asked that the Court either deem the Complainant's appeal to be withdrawn, or grant the Respondent's motion for entry of judgment.

DISCUSSION

The procedural history of this matter, as set out above, clearly reflects that the Complainant has been given every opportunity to pursue its appeal of the assessment by the Respondent. Because of the precarious financial situation of the Complainant, as well as the fact that it was proceeding *pro se*, the Complainant was repeatedly excused from its failure to comply with the Court's orders. It is clear from Mr. Rosario's most recent correspondence that, while it opposes the Respondent's request for judgment, the Complainant has no intention of taking any action to pursue its appeal, including complying with the Court's Orders to file briefs.

The regulations at 29 C.F.R. § 18.6(d)(2)(v) provide that:

> If a party or an officer or agent of a party fails to comply with a subpoena or with an order, . . . or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

After reviewing the entire record, a Judgment by Default is hereby entered against Complainant. In light of the foregoing, the Appeal in this matter is hereby DISMISSED.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge