IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF:

ELISA DEFUNTURUM, et al., Appellants, v. Saipan Manufacturers, Inc., Appellee,	) Civil Action No. 96-1177) Labor Case No. 95-0203) **ORDER UPON**) **JUDICIAL REVIEW**

On February 5, 1997, both the Appellants and the Appellee requested judicial review of an order, entitled *Administrative Order: Appeal*, entered on October 10, 1996 by the Secretary of Labor and Immigration, Thomas O. Sablan. Reynaldo O. Yana Esq. appeared on behalf of Appellants Elisa Defunturum et al. (approximately 94 former SMI employees) (hereinafter Appellants), and David A. Wiseman represented Appellee Saipan Manufacturers Inc. (hereinafter SMI). The Court has reviewed the arguments of both parties and finds that Appellants committed a procedural error during the administrative appeal process which was fatal to a portion of their appeal. Specifically, the Court finds that Appellants failed to timely file their appeal from the *Stipulated Settlement Agreement and Certification and Approval* (hereinafter Settlement Agreement) certified as approved by Hearing Officer Linn H. Asper on March 15, 1996. Accordingly, this Court and the Department of Labor and Immigration (hereinafter DLI) lost jurisdiction over the portion of Labor Case 95-0203 resolved

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by the Settlement Agreement. With respect to the remainder of the Appellants' appeal concerning Mr. Asper's denial of their request for transfer, the Court hereby **affirms** Secretary Sablan's October 10, 1996 decision affirming Mr. Asper's finding.

A. March 15, 1996 Stipulation Agreement Suffices as an Order Ripe for Review

Citing 3 CMC § 4444(d), the Appellants contend that the March 15, 1996 Stipulation Agreement did not start the clock ticking on the 15 day appeal deadline because it was not accompanied by "a finding, decision or order." The Court finds this argument untenable. Appellants' reliance on section 4444(d) is misplaced because that section requires the issuance of findings, decisions, or orders only "upon [the conclusion] of the hearing." The Appellants admit that no such hearing was *completed* because of the settlement process that occurred instead. The Court has reviewed the procedures set forth in the *Enforcement Provisions* of the *Nonresident Workers Act* (hereinafter NWA) and finds that they do not include, nor do they contemplate, additional action on the part of the hearing officer in the event of a stipulated settlement. The Appellants' suggestion that a hearing officer must render administrative findings for a *settled matter* borders on the absurd. Rather, under these circumstances, Mr. Asper satisfied his duty as a hearing officer by declaring that: 1) the terms of the settlement were fair, 2) the parties knowingly and voluntarily agreed to the terms, and 3) the action is dismissed with prejudice, except for the purpose of granting transfer relief to the Employees. Therefore, pursuant to the Settlement Agreement, the Appellants' case against SMI was dismissed with prejudice on March 15, 1996. Accordingly, as of March 15, 1996, the only issue left for Hearing Officer Asper to resolve was the matter of whether the Employees should be granted transfer relief. In a decision dated March 26, 1996, Mr. Asper denied that relief.

B. Section 4445(a) and the 15 Day Time Limit for Appeals

Section 4445 of the NWA allowed the Appellants 15 days to appeal Mr. Asper's finding that the parties had consented to the Settlement Agreement. Therefore, if any of the Appellants wished to dispute Mr. Asper's finding that consent was given, they should have filed such an appeal by March

30, 1996. The record reflects that no such appeal arrived at DLI until April 9, 1996, when then-Appellants' representative, Elisa Defunturum filed an appeal (hereinafter Elisa's Appeal) on behalf of the Appellants (94 of her fellow employees).[1] The Appellants contend that their former attorney, John F. Cool, entered into the Settlement Agreement without their consent. The Appellants further claim that their right to due process has been violated because they have never had an opportunity to offer evidence on the question of "consenting to settlement" in this labor case. Although the Appellants may have suffered some injustice at the hands of Mr. Cool, the Court is certain that their due process rights with respect to this labor case have remained intact. The Legislature has determined that 15 days is a sufficient amount of time for parties aggrieved by administrative decisions to issue their appeals to the Secretary of DLI. This fifteen day notice constitutes all the due process that the Commonwealth is required to afford the Appellants. The Appellants have offered no fact alleging that the Commonwealth fell short of its duty to notify them. Rather, the record reflects that a lack of communication may have occurred between the Appellants and their counsel at the time of the Settlement Agreement.[2] However, the Appellants have not convinced this Court that these events, which have occurred through no fault of the Commonwealth or SMI, justify the creation of an exception to the strict 15 day time limit for appeal to the Secretary. To the contrary, the Appellants' own memorandum provides a quote from a case which jibes with this Court's view: "a judgment by consent of the attorney founded upon a compromise made by him, without such authority, will ordinarily be vacated and set aside *on motion of the client made in apt time*. *Morgan v. Hood*, 189 S.E. 115, 116 (N.C. 1937) (emphasis added). Section 4445 clearly states, "if no appeal is made to the [Secretary] within 15 days of issuance of the original findings, orders or decisions shall be unreviewable administratively or judicially." 3 CMC § 4445(a). Appellants admit that no such request

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[1] Elisa's Appeal was accompanied by a letter from the Philippine Consulate explaining that the Employees listed in the appeal were no longer being represented by an attorney. Elisa's group of 94 employees appears to be the same group of Appellants now represented by Mr. Yana.

[2] The facts suggest that the Appellants may have a grievance against former counsel, Mr. Cool. Although the fifteen day rule precludes this Court's review of that grievance in this matter, the Appellants are not left without recourse.

for appeal issued prior to the 15th day of the time period, March 30, 1996. In other words, the Appellants failed to file the motion in **apt time**. Therefore, the terms of the Settlement Agreement were no longer reviewable as of March 30, 1996.

C. Secretary Sablan's Decision to Review Mr. Cool's Appeal and Elisa's Appeal Regarding Transfer Relief

On March 26, 1996, Mr. Asper disposed of the rest of this matter by denying the Employees request for transfer relief. On April 5, 1996, John F. Cool filed an appeal[3/] to the Secretary regarding Mr. Asper's denial of transfer relief. On April 9, 1996, the Secretary also received the portion of Elisa's Appeal concerning transfer relief. With respect to the issue of transfer relief, both of these appeals were filed within 15 days after Mr. Asper's March 26 decision.[4/] Thus, Secretary Sablan had jurisdiction to enter his October 10, 1996 decision affirming Mr. Asper's denial of transfer relief to Mr. Cool's clients, as well as to the Appellants.

With respect to the substance of the October 10th decision regarding transfer relief, the Court has reviewed the decision thoroughly and finds the Appellants' arguments in opposition unpersuasive. Transfer relief shall be granted at the end of the administrative hearing unless the employee was "equally in the wrong concerning the matters which gave rise to the filing of the labor complaint." Alien Labor Rules and Regs. VI(F)(10)(d). Secretary Sablan was presented with the Director of Labor's undisturbed "Notice of No Violation [on the part of SMI]" (issued February 1, 1996), and a signed Settlement Agreement which admits no fault on the part of SMI. Given these circumstances, the Court finds that Secretary Sablan had substantial evidence to conclude that the Appellants were

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[3/] The record reflects that on April 9, 1996, approximately 94 of the 236 Employees originally represented by Mr. Cool decided to dismiss Mr. Cool as their attorney, and replace him with Mr. Yana. Thus, Mr. Cool's appeal was filed on behalf of the remaining 142 former SMI employees not involved in the present judicial review process.

[4/] On May 3, 1996, Mr. Yana filed a Substitution of Counsel on behalf of the Appellants. On the same day, a third, and apparently redundant, appeal was filed by Mr. Yana on behalf of the Appellants. The May 3rd appeal was not timely filed, and therefore, should have been dismissed by Secretary Sablan.

equally in the wrong concerning the matters which gave rise to the filing of the Complaint. *See Limon v. Camacho*, Appeal No. 94-040 slip op. (N.M.I. Aug 5, 1996). Therefore, the Court hereby **affirms** Secretary Sablan's October 10th decision denying Appellants' request for transfer relief.

D. Appellants May 3, 1996 Appeal Is Time Barred

As a final matter, the Appellant's May 3, 1996 appeal was filed more than 15 days after both the March 15th decision and the March 26th decision of Mr. Asper. On May 16, 1996, SMI filed a motion to dismiss the May 3rd appeal. The October 10th decision did not address SMI's motion to dismiss. For the reasons stated above, the May 3rd decision should have been dismissed due to its late filing at DLI, and the resulting lack of jurisdiction to hear the appeal. From the record presented, it is unclear whether Secretary Sablan inadvertently excluded the May 3rd appeal from his October 10 decision, whether he considered the May 3rd appeal superfluous in light of its striking similarity to Elisa's appeal, or whether he thought that his lack of jurisdiction over the substance of the appeal precluded him from acting on a motion related to the May 3rd appeal.[5]

Whatever the reason, the fact remains that at the present time no action has been taken on the May 3rd appeal, and SMI has received no word with regard to its May 16th motion to dismiss. According to 3 CMC § 4445(c), Secretary Sablan had an obligation to "confirm or modify the agency findings, order or decision in writing within 10 days." In the Court's view, the Department's inaction for the five months between May 16th and October 17th, 1996 (the date of filing for this judicial review) amounts to "agency action unlawfully withheld or unreasonably delayed." *See* 1 CMC § 9112. Accordingly, Secretary Sablan is hereby ordered to **grant** SMI's motion to dismiss the May 3rd appeal.

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[5] Here, the Court notes that the issues presented and the Appellants listed in Elisa's appeal of April 9th, and Mr Yana's appeal of May 3rd, are virtually identical.

E. Conclusion

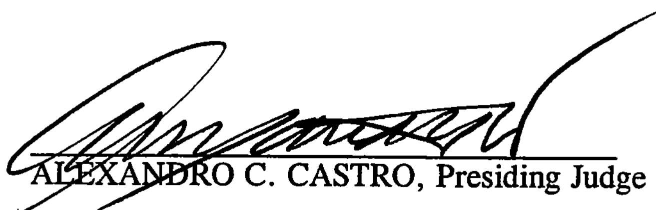
For the foregoing reasons, this Court finds:

1. DLI and this Court lost jurisdiction over the portion of Labor Case 95-0203 resolved by the Settlement Agreement.

2. Secretary Sablan's October 10, 1996 decision affirming Mr. Asper's denial of transfer relief is **affirmed**.

3. Secretary Sablan's failure to rule on SMI's motion to dismiss the May 3rd appeal constitutes agency action unlawfully withheld. Secretary Sablan shall **grant** SMI's motion to dismiss on jurisdictional grounds within ten (10) days of the filing of this judicial review.

So ORDERED this 12th day of February, 1997.



ALEXANDRO C. CASTRO, Presiding Judge