



Issue Date: 06 July 2005

Case No.: 2003-SCA-00018

In the Matter of

INTERNATIONAL SERVICES, INCORPORATED

and

OUSAMA KARAWIA

Respondents

DECISION AND ORDER

This proceeding arises under the McNamara-O'Hara Service Contract Act, 41 U.S.C. § 351 ("the Service Contract Act" or "the Act"). The regulations issued pursuant thereto can be found at 29 C.F.R. Parts 4 and 6. The Act sanctions those who are awarded a federal contract and subsequently fail to (1) pay the required wage, (2) award minimum fringe benefits or (3) keep adequate records, by barring them from receiving federal contracts for a period of 3 years.

Background and Procedural History

On March 15, 1999, the Secretary of Labor ("Secretary") filed a complaint against Respondents, alleging they had violated the Act by failing to timely pay the minimum hourly rate and minimum fringe benefits between March, 1996 and February, 1999. (Complaint ¶ VI). The Secretary and Respondents reached an accord to resolve those issues, which was approved by Administrative Law Judge Richard A. Morgan on May 9, 2001. (Complaint ¶ VII). The Consent Findings and Order ("CF&O")¹ specifically relate to Contract No. GS-02P-94-CID-0141, a General Services Administration ("GSA") contract lasting from March of 1996 until March of 1998; Contract No. V463P-0051-96, a Veteran's Affairs contract covering the period of October, 1997 until January, 1998; and Contract No. GS-11P-96-MPC-0513, another GSA contract beginning in January of 1996 and ending December 31, 1997. (CF&O at 2).

¹ Respondents objected to the admission of evidence relating to the time period before the approval of this document. Respondents also cited case law supporting their position that this agreement cannot be counted against them as having a history of prior violations of the Act. However, this document specifically states, "The Consent Findings and Order are without prejudice to (a) plaintiff's future exercise of all investigative enforcement authority under the SCA...or (b) respondent's future assertion and exercise of all defenses available to them under law." In addition, the document states, "The parties stipulate that this Consent Findings and Order may be entered into evidence in any future proceeding, provided that the parties will be free to argue, and the Judge shall be free to decide, the weight thereof." Although this document does not itself establish any previous violations of the Act, it is not only relevant to this matter but crucial to the issue of whether Respondent's actions occurring after entering into this agreement constitute culpable neglect.

Within the Consent Findings and Order, it is alleged that 42 investigative files had been opened and Respondents were found to have owed at least \$157,000 to their employees. (CF&O at 3). Respondents did in fact pay \$157,789. (CF&O at 5). However, they did so without admitting any violations of the Act. (CF&O at 6).

The Consent Findings and Order also state that Respondents agreed to establish a compliance program which required them, *inter alia*, to employ an ombudsman and to obtain legal counsel experienced in wage/hour matters. The ombudsman was to be a full-time employee, reporting directly to Respondent Karawia, charged with the duty of handling all future payroll complaints. The ombudsman was also to keep quarterly records. (CF&O at 11-12). “Working with counsel as necessary, respondents [agreed] to use information and experience gained from the compliance program to develop procedures and an institutional knowledge base to help assure wage/hour compliance on a permanent basis.” (CF&O at 12).

The complaint in the instant matter, alleging that Respondents have failed to fulfill the obligations imposed under the Consent Findings and Order, was filed on May 28, 2003. The complaint was filed in relation to Contract No. GS-02P-94-CID-0141 and No. GS-02P-02-CIF-0001. Both are GSA contracts and together they cover the period beginning March 1, 1996 and ending March 31, 2003. (Complaint ¶ VIII). This complaint again alleges that Respondents have failed to timely pay the minimum hourly rate due to employees under these federal contracts and have failed to timely pay the minimum fringe benefits. (Complaint ¶¶ IX & X). It is alleged that as a result, Respondents at various times owed in excess of \$600,000 (Complaint ¶ XI). Although the Administrator concedes that no further payments are due, debarment is sought. (Complaint ¶ XII). Respondents answered the complaint on June 19, 2003.

This matter was transferred to the Office of Administrative Law Judges and was assigned to me on June 1, 2004. The formal hearing was held on November 22 and 23, 2004 in New York, New York and on January 4 and 5, 2005 in Philadelphia, Pennsylvania, during which time both parties presented testimony² and other evidence.³ Following the hearing, the record was left open for the submission of additional evidence and closing briefs. After requests for extensions, which I granted for good cause shown, I ordered that all evidence and post hearing briefs be filed by May 20, 2005 and reply briefs by June 7, 2005.

Issue

The only issue presented for my resolution is whether Respondents shall be debarred pursuant to § 354(a) of the Act. Furthermore, in reaching an outcome, I need not address whether Respondents actually violated the Act, since they have admitted doing so, although they

² The transcript of the hearing consists of 681 pages and will be cited as “Tr. at --.”

³ The Administrator’s exhibits will be cited as “Adm. X” and Respondents’ exhibits will be cited as “RX.”

argue these violations were inadvertent.⁴ I thus need only determine whether Respondents have established that they are entitled to relief from debarment.

The Arguments of the Parties

The Administrator argues that ISI and its president, Mr. Karawia, should be debarred for a period of three years because their conduct amounts to culpable neglect, and they are therefore not entitled to relief by proving the existence of unusual circumstances. The Administrator also argues that Respondents are precluded from establishing unusual circumstances which would relieve them from the sanction of debarment because they have a history of violating the Act. In the alternative, the Administrator argues that Respondents have failed to prove unusual circumstances.

As a preliminary matter, Respondents argue that I have no jurisdiction over this matter since International Protective Services, the legal entity which does business as ISI, was never served.⁵ Next, Respondents argue they have proven the existence of unusual circumstances, including racial discrimination and GSA's failure to pay money due on the contract, sufficient to warrant relief from the ordinary sanction of debarment. Respondents also argue that even if ISI is debarred, Mr. Karawia should not be debarred. Finally, Respondents ask that I find that they have been de facto debarred since October 18, 2002, and that I thus not sanction Respondents further.

Statement of Facts⁶

Respondent Karawia started his security guard business in 1982 when he was 17 years old. (Tr. at 373). Mr. Karawia testified that he "built [his] company on integrity, not doing anything illegal." (Tr. at 567). He presently owns 100 percent of Karawia Industries, the holding company of International Protective Services which does business as ISI. (Tr. at 628). In addition, he serves as the chief executive officer and president of both Karawia Industries and International Protective Services. (Tr. at 628). As president of International Protective Services, he exercised significant control of ISI. For example, Mr. Karawia negotiated the collective bargaining agreements, signed both payroll and non-payroll checks, supervised the work of others, including the chief financial officer, and set the rate of pay for ISI executives (Tr. at 634-38). The ombudsman, who was hired pursuant to the Consent Findings and Order, also reported directly to Mr. Karawia.

⁴ Respondents also argue that some violations were due to the fact that the government was withholding money due to ISI under the contract, leaving ISI with a cash flow problem.

⁵ I note that ISI submitted the bid for the contract and the contract was awarded to ISI. (Tr. at 634).

⁶ The record in this matter is voluminous. Although I have carefully considered all of the evidence and testimony, based on my analysis of the issue presented, the pertinent facts in this case relate to Respondents' disregard of its obligations pursuant to the Consent Findings and Order and only evidence relevant thereto will be discussed.

The first federal contract awarded to ISI in 1996 was a GSA contract, and more specifically was the predecessor to the contract involved herein. (Tr. at 375-76).

Adm. X-110 is a chart showing 36 compliance actions with regard to ISI that took place after the Consent Findings and Order were issued on May 9, 2001. These compliance actions were a result of Respondent ISI's failure to pay the prevailing wage or required fringe benefits. The total back wages owing was determined to be \$630,081.07, owed to 1,943 employees. (Tr. at 131).

Perhaps one of the most relevant violations of the Act alleged by the Administrator in this matter relates to Mr. Karawia requesting and receiving a refund of money paid to a third-party benefits administrator under the GSA contract. According to Mr. Karawia, due to the mistake of ISI's chief financial officer, ISI was paying its employees twice for each sick day taken. (Tr. at 559-60). Upon realizing this, Mr. Karawia asked Contractor's Employee Benefits Administration ("CEBA"), the third-party benefits administrator, for a refund of the amount paid for sick time. (Tr. at 561).

Although Mr. Karawia testified that he did not know this was in violation of the Act, he admitted that before writing the letter requesting the reimbursement (Adm. X-13), he did not consult anyone from the Department of Labor ("DOL") and did not seek legal advice. (Tr. at 646). Only after DOL contacted ISI regarding the illegality of this action did Mr. Karawia consult with an attorney, and the attorney, Mr. Baker, advised Mr. Karawia to repay the money.⁷ (Tr. at 562-63). Mr. Baker subsequently advised Mr. Karawia that he was not permitted to recoup the money from CEBA even if ISI had paid the same benefit twice. (Tr. at 560).

The next part of the compliance agreement which the Administrator alleges ISI has failed to comply with is that which requires ISI to employ an ombudsman, to make his identity and location known to all employees, and requires the ombudsman to keep records.

Adm. X-114A is a letter to Ms. Orlando, ISI's chief financial officer, dated January 16, 2002, from Ms. Quinn, the Assistant District Director of Wage and Hour. The letter is regarding numerous payroll complaints and states, "Calls to your firm's Ombudsman, Mr. Hannibal Almodovar, on 01/02/2002, 01/03/2002, and 01/09/2002 regarding these issues have gone unreturned." (Adm. X.-114A).

Adm. X-114B is an additional letter from Ms. Quinn to Ms. Orlando, dated January 30, 2002, outlining more individual payroll complaints. (Tr. at 116). Again, this letter indicates that calls to the ombudsman went unreturned. (Tr. at 117).

Mr. Weeks has been employed by the U.S. Department of Labor for over seven years as an investigator, working out of the Syracuse and Albany area offices. (Tr. at 42). Mr. Weeks

⁷ Mr. Baker is a labor and employment attorney who was hired pursuant to the Consent Findings and Order for the purpose of assisting ISI in preparing compliance materials. (Tr. at 512).

testified that employees regularly told him that they were unsuccessful reaching the ombudsman. (Tr. at 154).

Mr. Martin is employed by DOL, Wage and Hour Division in Albany, New York, as the District Director. (Tr. at 333). He has held that title since April of 1999. (Tr. at 334). The building in which Mr. Martin works was at one time guarded by ISI employees, and those guards regularly reported that they were unable to reach the ombudsman. (Tr. at 342). Mr. Martin did not personally try to contact him. (Tr. at 343-44).

Mr. Karawia admitted during cross-examination that employees were not to take complaints directly to the ombudsman. Instead, there was “a process” or “a program that they follow.” As part of that process, an employee was to first go to his supervisor and the manager of the local office. (Tr. at 643). In addition, Mr. Karawia admitted that when Maggie Melogiza replaced Mr. Almodovar as ombudsman, the employees of ISI were not notified for three weeks. (Tr. at 644).

The Consent Findings and Order requires that ISI’s ombudsman “retain documentation that includes report forms for employees lodging complaints with the ombudsman, and quarterly spreadsheet reports reviewed and signed by both the ombudsman and Mr. Karawia listing all the complaints received by the ombudsman, investigative findings, and any corrective actions taken during the quarter covered by the report.” (Tr. at 134-35). These records were requested from Ms. Orlando, who responded that no such records exist. (Tr. at 135).

Roderick McNeil, who began working for ISI in 1999, testified that he called ISI in California on one occasion to speak with a gentleman by the name of Hannibal in payroll. (Tr. at 38-39). He left a message for him but never received a response, although Mr. McNeil did testify to his belief that the problem he was calling about was later resolved. (Tr. at 39).

Harry Nopper worked for ISI as a security guard beginning July 1, 1996 and worked in that capacity until October 17, 2002. (Tr. at 297). Mr. Nopper testified to having periodic problems with his payroll and fringe benefits while being employed by ISI. (Tr. at 297-98). He testified that he did not ever attempt to contact the ombudsman although he did call ISI’s California office because of a payroll issue that he did not feel was resolved in a reasonable time. Mr. Nopper testified that he was disciplined and suspended as a result of making that call and later reinstated and reimbursed for the lost time after filing a union complaint. (Tr. at 300).

James Costanzo began working for ISI in June, 1996 and worked there until sometime in 2002. (Tr. at 302). While employed by ISI, he constantly had problems with wages or fringe benefits, according to his testimony. (Tr. at 302). According to Mr. Costanzo, it sometimes took months for ISI to resolve payroll issues after the appropriate form was filed. (Tr. at 305). He never called ISI in California and was told not to by the company. (Tr. at 306).

Mr. Almodovar testified by deposition regarding his position as ombudsman. (Adm. X.-110). According to his testimony, Mr. Karawia informed him a few months after he was hired as the human resources director that he would be taking on this new role and gave him some documents to read, which were going to be distributed to ISI’s employees. (Adm. X.-110 at 29-

30). These documents, as Mr. Almodovar recalled, instructed employees to call him with problems and gave his business address and telephone number. (Adm. X.-110 at 30).

When asked if he ever performed any duties as ombudsman, Mr. Almodovar replied:

I remember one lady calling in. She called in or sent me a letter. I actually had a letter from her and we spoke on the phone. I don't remember in what order. But we spoke on the phone and she sent me a letter. And then I remember contacting the branch and spoke to someone at the branch. It was a lady. I don't remember who it was. And she told me that she had spoken to the employee and explained the situation to the employee and the person didn't understand.

So what I did was I requested from her something in writing explaining it all in writing. And so she sent it to me, and then I sent the letter with the documents to the employee. That's as far as I remember. What happened after that, I don't remember.

(Adm. X-110 at 32-33).

When asked if he had received other complaints in his role of ombudsman, Mr. Almodovar responded that he received a large volume of calls while employed by ISI and was unable to recall what specifically the calls related to. (Adm. X-110 at 50). Mr. Almodovar also testified that he submitted monthly reports, but they did not relate to matters that arose in his position as ombudsman. (Adm. X.-110 at 47).

Analysis

I. The issue of personal jurisdiction has been waived.

Mr. Karawia testified that ISI is a part of International Protective Services; International Protective Services does business as ISI. (Tr. at 632). However, Respondents now argue that there is no personal jurisdiction because International Protective Services, which is the legal entity, has not been named as a party to this case and has not been served. The issue of personal jurisdiction has been waived, as Respondents answered the complaint, filed motions and fully defended the claim at trial.

II. If ISI is debarred, Respondent Karawia, the President and Principal Stockholder, can also be debarred.

It is well settled that an individual who serves as president and principal stockholder, who is responsible for the performance of the contract or who has overall control of the business operations, is personally responsible for violations of the Act and can be debarred. *See Nantom Services, Inc.*, 1997-SCA-35 (ALJ, Dec. 22, 1998); *Rasputin, Inc.*, ARB Case No. 03-059, 1997-SCA-32 (ARB, May 28, 2004); *Stephen W. Yates*, ARB Case No. 02-119, 2001-SCA-21; *SuperVan, Inc.*, ARB Case No. 00-0008, Case No. 1994-SCA-47 (ARB, Sept. 30, 2002); *Hugo*

Reforestation, Inc., ARB Case No. 99-0003, 1997-SCA-20 (ARB, Apr. 30, 2001); *Melton Sales and Services, Inc.*, 1982 SCA-127 (ALJ, Nov. 18, 1985).

Because Mr. Karawia is the president and chief executive officer of both the holding company that owns International Protective Services and of International Protective Services itself, and because he exercises significant control over the business operations of ISI, he is subject to debarment.

Further, I find that Mr. Karawia is personally responsible for at least one violation of the Act. Mr. Karawia admitted requesting the partial refund of fringe benefit payments from CEBA. This refund was sought in violation of the Act and without consulting counsel as required by the Consent Findings and Order.

III. Respondents are not entitled to an opportunity to prove the existence of unusual circumstances because their conduct amounts to culpable neglect.

The Act provides:

The Comptroller General is directed to distribute a list to all agencies of the Government giving the name of persons or firms that the Federal agencies or the Secretary have found to have violated this chapter. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this chapter.

41 U.S.C. § 354(a).

The regulations provide this additional insight:

The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. (Citations omitted). Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a

contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature.

29 C.F.R. § 4.188 (b)(3)(i).

Therefore, if I find that ISI's conduct which violated the Act amounts to culpable neglect, relief from debarment is not warranted despite whether ISI can prove the existence of unusual circumstances. I do find that ISI and Mr. Karawia acted with culpable neglect.

In discussing debarment, the regulations speak of "a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract." 29 C.F.R. § 4.188(b)(1). I find that just as the contract language imposes a higher standard of compliance, so does the language of the Consent Findings and Order because it created a duty which Respondents were completely and fully aware of, as opposed to a duty imposed by the Act of which Respondents were unaware.

Respondents' duties, which were imposed in order to ensure future compliance, were clearly set out in the Consent Findings and Order. They undertook an affirmative duty to establish a compliance program, which included an obligation to employ an ombudsman and to make his identity and function known to all employees, as well as employing an experienced labor and employment attorney who would be consulted when compliance issues arose. Because Respondents failed to comply with these explicit instructions, and as a result violated the Act, their actions undoubtedly amount to culpable neglect.

Although ISI and Mr. Karawia did take affirmative steps to educate the employees regarding the compliance program, they failed in clearly conveying the existence, identity and role of the ombudsman. Despite Mr. Almodovar's equivocal testimony, it is clear from the testimony of Wage and Hour employees and ISI employees that he was contacted several times in his role of ombudsman, and usually did not respond. Further, I find that Respondents failed to execute their duty with respect to the ombudsman because at least some employees were told not to contact the California office, where Mr. Almodovar was located, with complaints. In addition, both Mr. Almodovar, at his deposition, and Ms. Orlando in a letter to Wage and Hour admitted that the ombudsman did not keep the required records.

Respondents also acted in disregard of the Consent Findings and Order by failing to consult with their attorney before taking actions which violated the Act, namely requesting a refund of money paid to a third-party benefits administrator for fringe benefits. I find that this is precisely the type of question that the Consent Findings and Order anticipated, when it stated, "Respondents commit to obtaining and acting upon advice from legal counsel experienced in wage/hour matters in addressing issues that arise through the ombudsman *or in overall wage/hour compliance.*" (Emphasis added). (CF&O at 12).

In addition, I find that Respondents' history of violations precludes Respondents from seeking relief from debarment. After the Consent Findings and Order were issued, Respondents were found to be in violation of the Act an astounding number of times. It was clear from Mr.

Karawia's testimony that the violations of the Act were not purposeful and Respondents promptly rectified most issues after being made aware of them by DOL. However, Respondents never took adequate steps to ensure future compliance and continued violating the Act until GSA finally canceled the contract. I find that the number of compliance actions initiated against ISI alone indicates extreme irresponsibility amounting to culpable neglect.⁸

Based on the foregoing, Respondents must be debarred for a period of three years regardless of whether unusual circumstances existed.

IV. Respondents are not entitled to a credit for the period of time during which they claim they have faced de facto debarment.

The Board of Service Contract Appeals has held that a contractor is not entitled to a credit against the 3-year debarment period, because the Act specifically mandates when the debarment period begins. *The Swanson Group, Inc.*, 1995 WL 843407 (L.B.S.C.A. 1995). The Act does in fact state that the Comptroller General is to distribute a list of the firms found to have violated the Act and such firms shall be debarred for a period of 3 years from the date of publication of such list. 41 U.S.C. § 354(a).

Despite Respondents' compelling argument to the contrary,⁹ I must agree with the Board of Service Contract Appeals. The legislature has clearly indicated its intent that the 3 year period begin running upon publication of the above described list and I am therefore without authority to give Respondents credit for the time during which they were unable to contract with the federal government based on the fact that they were removed from the Federal Supply Schedule ("FSS").

⁸ During the hearing, Ms. Quinn indicated that had DOL's investigation not taken place, she is confident that ISI would never have paid the backwages due to its employees in many instances, although she admitted that some would have eventually been paid. (Tr. at 327-28).

⁹ Respondents argue they have been de facto debarred. Following cancellation of the GSA contract, ISI was eliminated from the FSS and was therefore unable to do any work with the Federal Government. (Tr. at 457). The other federal contracts that ISI had concurrently with the GSA contract were all lost following the cancellation of the GSA contract and the removal of ISI from the FSS. The Veteran's Administration in Alaska, for example, would not allow ISI to rebid on that contract because ISI was no longer listed on the FSS. ISI also lost its contract with the National Park Service. (Tr. at 458). According to Mr. Karawia, ISI was then unable to contract with the federal government between October 18, 2002 and the date of the hearing, which represents a period of over 2 years. (Tr. at 500). Presumably, ISI has not been able to contract with the federal government through the present, representing a period of almost 3 years.

ORDER

It is hereby ORDERED that Respondents, International Services, Inc. and Ousama Karawia, shall be debarred for a period of 3 years.

A

RALPH A. ROMANO
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board’s address is

Administrative Review Board
United States Department of Labor
Room S-4309, FPB
200 Constitution Avenue, NW
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB’s Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).