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Issue Date: 20 May 2004

CASE NO: 2002-WIA-0005

In the Matter of:

ROLE MODELS OF AMERICA, INC.
Complainant,

v.

UNITED STATES DEPARTMENT OF LABOR,
Respondent.

Before: PAMELA LAKES WOOD
Administrative Law Judge

ORDER DENYING GRANT OFFICER'S MOTION IN LIMINE
ORDER DENYING COMPLAINANT'S MOTION TO WITHDRAW
ORDER STAYING PROCEEDINGS

Pursuant to my Order Scheduling Prehearing Conference in Lieu of Hearing issued on May 6, 2004, a prehearing conference was held in this matter on May 10, 2004 in Washington, DC at 10:00 a.m. The Conference was attended by Vince Constantino, Esq., counsel for the Grant Officer and Dr. Robert Alexander, who did not enter an official appearance on behalf of Complainant Role Models of America, Inc. ("RMA") but spoke on the company's behalf.[1]

The matters before me consist of: 1) the Grant Officer's motion in limine and motion for submission on the record; 2) the motion to withdraw appeal filed by Complainant and the "emergency motion to reaffirm prior motion to withdraw" filed by Complainant at the prehearing conference; and 3) the request by Complainant for additional time to retain counsel.

Grant Officer's Motion in Limine

As discussed at the hearing, I am denying Grant Officer's Motion in Limine and Motion for Submission on the Record because it would unfairly punish this pro se Complainant. Department of Labor ("DOL") filed the motion in limine on May 6, 2004 asking this Court to

[1] Dr. Alexander explained to the undersigned at the conference that he did not wish to represent Complainant RMA because he did not believe he was qualified to provide adequate representation without being trained as an attorney.

preclude Complainant from presenting testimony or exhibits for failure to submit a prehearing report within the specified deadlines. Furthermore, DOL requested that the Request for Admissions tendered to Complainant during discovery, which Complainant did not answer, be deemed admitted. Complainant's failure to furnish a prehearing report[2] and failure to file a response to the Grant Officer's Request for Admissions were reasonable given Complainant's continuing efforts to retain counsel in this matter. Sanctions such as those requested by the DOL would be harsh under the circumstances. The administrative law judge has discretion to take appropriate action when a party fails to comply with discovery. 20 C.F.R. §18.6 (d). In this case, I find that imposition of a sanction would not be appropriate and Complainant will not be penalized for failing to file a prehearing report and provide responses to discovery requests in a timely manner. Accordingly, Respondent's motion in limine and motion for submission on the record are DENIED.

Complainant's Motion to Withdraw

Complainant's motion to withdraw the appeal is denied without prejudice to its reassertion after Complainant has retained the services of an attorney or has exhausted efforts to do so. On May 5, 2004, Complainant submitted a motion to withdraw its appeal via facsimile. Prior to my ruling, Complainant reasserted its motion at the prehearing conference on May 10, 2004. As discussed at the hearing, a motion to withdraw the appeal would have the effect of reinstating the Grant Officer's determination that Complainant owes $262,258 as disallowed costs for the reasons stated in the Final Determination. Because of the jurisdictional time limitations on the filing of an appeal in these matters, such a ruling would be dispositive of the issue before me and preclude further pursuit of the claim.[3] Again, without representation by counsel, such a ruling before allowing Complainant ample time to seek counsel would unfairly prejudice this pro se Complainant. Accordingly, the Complainant's motion to withdraw the appeal is DENIED without prejudice to its reassertion.

Stay of Proceedings

As discussed at the hearing, I am granting a stay of proceedings for 180 days pursuant to Complainant's request for 180 days to seek counsel in this matter.[4] A stay rather than a continuance is appropriate in view of Complainant's need for assistance in responding to discovery. The stay may be lifted prior to the expiration of the 180-day period by Order of the

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[2] DOL argued that Complainant failed to file a timely Prehearing Exchange by not submitting the document by May 3, 2004. Twenty-nine C.F.R. § 18.4 denotes that time computation for submission of documents due within a prescribed time period of seven days or less does not include Saturdays, Sundays or holidays. Under this rule, the prehearing exchange was due on May 3, 2004. Therefore, Grant Officer's assertion that the prehearing exchange was not timely submitted is technically correct; however, in view of Complainant's pro se status, his failure to respond within seven business days rather than seven calendar days is not deemed to be a violation of the rules. On May 5, 2004, Complainant filed a motion to withdraw the appeal in lieu of submitting a prehearing exchange, which is accepted as timely.

[3] To reiterate the undersigned's earlier rulings and discussion at the hearing, the only issues in the administrative case are whether the Grant Officer properly disallowed certain grant expenditures and whether the Grant Officer properly found Grantee's accounting practices to be deficient.

[4] As noted at the hearing, I will not be inclined to grant further continuances in this matter for the purpose of continuing attempts to retain counsel by Complainant because 180 days should be a sufficient period of time for Complainant to seek the services of an attorney.

undersigned or agreement of the parties after Complainant has retained an attorney. Once the stay has been lifted, parties will have 30 days to respond to pending discovery, including Respondent's Request for Admissions, Interrogatories and Request for Production of Documents served on Complainant on March 4, 2004. Accordingly, Complainant's request for a stay of proceedings for a 180-day period is GRANTED.

ORDER

IT IS ORDERED that the Grant Officer's motion in limine and motion for submission on the record be, and hereby is, **DENIED**; and

IT IS FURTHER ORDERED that Complainant's motion to withdraw the appeal be, and hereby is, **DENIED**, without prejudice to its reassertion; and

IT IS FURTHER ORDERED that a Stay of Proceedings in this matter for a period of 180-days be, and hereby is, **GRANTED**.

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PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.