



Issue Date: 16 March 2005

CASE NO: 2002-WIA-0005

In the Matter of:

ROLE MODELS OF AMERICA, INC.
Complainant,

v.

UNITED STATES DEPARTMENT OF LABOR,
Respondent.

**ORDER DENYING COMPLAINANT'S MOTION FOR INTERVENTION
AND EXTENDING STAY OF PROCEEDINGS**

Proceedings in this matter were stayed until February 15, 2005, by Order of December 10, 2004.

By facsimile of January 24, 2005 (with hard copy filed on February 1, 2005), Complainant Role Models of America, Inc., through its principal Dr. Robert Alexander, filed a "Motion for Court to Intervene and to Sanction or Enforce Respondent DOL's Compliance to Fund Remaining Proceeds from Grant Agreement, in Order for Complainant to Retain Counsel and Move Forward in its Compliance with Court Order" [hereafter "Complainant's Motion for Intervention" or "Motion."] In the Motion, Complainant seeks this tribunal's assistance in obtaining a final payment of \$12,000 under the Grant which is the subject of this litigation. Complainant asserts that it voluntarily dismissed its Chapter 11 bankruptcy case due to insufficient funds. Further, Complainant asserts that it has had difficulty retaining counsel and that the one law firm that has agreed to represent it will only do so upon receipt of a retainer. Complainant therefore seeks release of the \$12,000 for the retainer and associated fees and expenses. Complainant seeks a continuation of the stay until the undersigned "upon review and consideration determines the proper remedy to sanction or enforce Respondent DOL's compliance with the bilateral binding grant contract."

In a letter response of February 17, 2005 by Senior Trial Attorney Vincent C. Costantino, filed on March 1, 2005 (which has been accepted for filing despite its untimeliness), Respondent Department of Labor opposed any further stays and requested that this matter be dismissed for lack of prosecution. Respondent notes that Complainant has not responded to outstanding discovery. In addition, Respondent notes that \$262,258 has been disallowed and that any further payments under the grant could not be made until the disallowance is resolved and a final debt established. Finally, Respondent asserts that this tribunal lacks jurisdiction to order the release of any unpaid grant funds.

In Complainant's facsimile "Surreply" of March 1, 2005, Complainant asserts that Respondent's counsel and the Grant Officer have been "mean spirited, inconsiderate, and even biased toward the Complainant." Complainant disputes Respondent's assertions. In addition, Complainant notes that it has continued to seek pro bono legal counsel.

While it is unfortunate that Complainant's apparent insolvency has made it difficult for Complainant to retain counsel, the remedy it suggests is not feasible. I am inclined to agree with Respondent that I lack jurisdiction to order payment of any unpaid funds under the grant. However, even if I had such authority, it would be premature to consider the issue until I have first resolved the issue of the amount of grant funds that have been properly disallowed. Certainly, the \$12,000 Complainant claims are a drop in the bucket compared with the amounts that Respondent alleges have been overpaid under the grant.

In view of the above, I am extending the stay to allow Complainant to make further efforts to retain counsel, pro bono or otherwise. In the event that Complainant is unable to retain counsel, the only viable alternative is to require Complainant to proceed pro se. In this regard, a dismissal of the instant suit would make Complainant subject to repayment of the disputed grant funds, some of which may have been improperly disallowed. Thus, it is to Complainant's advantage to go forward, inasmuch as this matter cannot be stayed indefinitely. At the hearing or trial in this matter, the parties will be expected to address each item disallowed under the grant and provide evidence and argument addressing whether its disallowance was appropriate. This matter will be addressed further at a Prehearing Conference to be scheduled.

The parties shall jointly or separately provide a suggested schedule for proceeding by no later than May 16, 2005. In the proposed schedule, the parties shall indicate their available dates for a Prehearing Conference (to be conducted either in court or telephonically), the amount of time required for completion of discovery (including interrogatories, requests for production of documents, and depositions), and suggested trial dates. Inasmuch as the parties are located in the vicinity of Washington, D.C., it would be the undersigned's preference to have the Prehearing Conference in court. Upon receipt of the response by the parties, the Prehearing Conference will be scheduled. Accordingly, good cause having been shown,

ORDER

IT IS HEREBY ORDERED that Complainant's Motion for Intervention, Respondent's motion to dismiss, and all other pending motions be, and hereby are, **DENIED**, and

IT IS FURTHER ORDERED, sua sponte, that (1) the Stay of Proceedings is extended for an additional sixty (60) days from the date of this Order, and (2) any counsel appearing for Complainant shall enter an appearance, and the parties shall jointly or separately provide a suggested schedule for proceeding (including available dates for a Prehearing Conference, the amount of time required for completion of discovery, and suggested trial dates) by no later than May 16, 2005.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.