

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 08 March 2013

Case No.: 2010-OFC-00006

In the Matter of:

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

D&S CONSTRUCTION OF PINEVILLE, INC.,

Defendant.

**RECOMMENDED DECISION AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT**

This matter arises under Executive Order 11246 as amended by Executive Order 11375 and Executive Order 12086 (43 Fed. Reg. 46501) ("Executive Order") and its implementing regulations at 41 C.F.R. Chapter 60. The Executive Order and regulations prohibit employment discrimination by government contractors based on race, color, religion, sex, or national origin. Under Section 202 of the Executive Order, federal contractors must take affirmative action to ensure that discrimination does not occur and to treat applicants and employees during hiring and employment without regard to their race, color, religion, sex, or national origin.

BACKGROUND

On May 10, 2010, the Plaintiff, Office of Federal Contract Compliance Programs (OFCCP), filed a complaint against the Defendant, D&S Construction of Pineville, Inc. (D&S). The matter was assigned to me and counsel for the parties began discovery.

The Plaintiff's complaint alleged that the Defendant is engaged in construction services, including clearing, grubbing, dirt fill, and utility work, and that it has been a party to contracts or subcontracts with agencies of the United States Government within the meaning of Executive Order 11246. Specifically, the complaint alleges that the Defendant was party to a subcontract with the U.S. Army (Subcontract #04-317-32-S11) for subsidiary construction services at Fort Stewart, Georgia.

The complaint further alleged that the Defendant violated the Executive Order and its implementing regulations by fostering a racially hostile work environment at its Fort Stewart worksite. Specifically, it alleged that top-ranking officials of the Defendant “singled out African-American employees for continuous and pervasive racial slurs and epithets, racial insults, and racist jokes” thereby altering the conditions of African-American employees’ employment and creating an abusive working environment. Further, the complaint alleged, the Defendant had no internal complaint procedure to effectively address allegations of harassment.

The Defendant filed a motion for partial summary decision, which I denied on December 15, 2010. Discovery continued, and a hearing was scheduled for June 26, 2012 in Savannah, Georgia.

On May 31, 2012, counsel for the Defendant moved for leave to withdraw from representation and for a continuance to enable the Defendant to obtain new counsel. I granted the motion on June 26, 2012. In the order granting that motion, I directed the Defendant to notify my office if and when it obtained new counsel, and directed the Plaintiff to provide me with periodic updates on the status of the case. This notice was received by the Defendant and the return receipt was signed on June 28, 2012.

On August 21, 2012, counsel for the Plaintiff advised my office that she had made several attempts to contact the Defendant, but that they had been unsuccessful. She added that she was attempting to determine whether the Defendant still existed and, if not, whether there was a successor company. She further stated that if attempts to contact the Defendant continued, she anticipated moving for a default judgment.

On December 13, 2012, the Plaintiff moved for a default judgment. I sent a notice on January 29, 2013 to advise the unrepresented Defendant of the nature of the motion, including the statement that “[f]ailing to respond to the motion could mean that the motion would be granted and the case would be over.” I specified that a response would be due no later than 20 days from the date of the order.

DISCUSSION

The procedural rules for administrative proceedings instituted by OFCCP, 41 C.F.R. Part 60-30, do not specifically address default judgments. However, 41 C.F.R. §60-30.1 provides that “[i]n the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.”

F.R.Civ.P. 55(a) states that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Rule 55(b)(2) provides that “[i]n all other cases, the party must apply to the court for a default judgment” and requires that the party against whom default is sought be given at least 7 days’ notice of the application. That notice has been provided in this case.

ORDER

The Plaintiff's motion for default judgment is granted and the requested relief is ordered:

1. The Defendant, its successors, officers, agents, servants, employees and all persons in active concert or participation with it are enjoined from failing to comply with the requirements of Executive Order 11246 and the rules and regulations issued pursuant thereto, and from discriminating against African-American employees by permitting continued racial harassment of said employees;
2. The Defendant is ordered to provide complete relief, including payment of lost wages, interest, front wages, and other fringe benefits, to Alton L. Griggs and Joseph Sheppard, Jr.
3. The Defendant, , its successors, officers, agents, servants, employees and all persons in active concert or participation with it are enjoined from retaliating, harassing, or engaging in any form of reprisal or other adverse action against individuals who have complained about Defendant's violations of Executive Order 11246;
4. The Defendant is ordered to expunge any negative or adverse information from the employment records of individuals who have complained about violations of Executive Order 11246;
5. It is ordered that, after consultation by the Secretary of Labor with contracting agencies, the Defendant's Government contracts and subcontracts be cancelled.
6. The Defendant, its successors, officers, agents, servants, employees and all persons in active concert or participation with it, are declared ineligible for the award of any Government contracts or subcontracts, or for the extension or modification of any existing Government contracts or subcontracts, until such time as the Director of OFCCP determines that Defendant is in compliance with Executive Order 11246 and the rules and regulations issued thereunder.

KENNETH A. KRANTZ
Administrative Law Judge

KAK/ecd/mrc
Newport News, VA

NOTICE OF APPEAL RIGHTS: To appeal, you must file exceptions (“Exception”) with the Administrative Review Board (“Board”) within fourteen (14) days of the date of issuance of the administrative law judge’s recommended decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Any request for an extension of time to file the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days before the Exception is due. *See* 41 C.F.R. § 60-30.28.

On the same date you file the Exception with the Board, a copy of the Exception must be served on each party to the proceeding. Within fourteen (14) days of the date of receipt of the Exception by a party, the party may submit a response to the Exception with the Board. Any request for an extension of time to file a response to the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days before the response is due. *See* 41 C.F.R. § 60-30.28.

Even if no Exception is timely filed, the administrative law judge’s recommended decision, along with the record, is automatically forwarded to the Board for a final administrative order. *See* 41 C.F.R. § 60-30.27.