



Issue Date: 07 February 2020

Case Nos.: **2018-SCA-00005**
2018-SCA-00008

In the Matter of:

**SUPREME PRO CLEAN, LLC AND
MATTHEW ABUNIS, AN INDIVIDUAL,**
Respondents.

DECISION AND ORDER GRANTING MOTION FOR A DEFAULT JUDGEMENT

This matter arises under the McNamara-O’Hara Service Contract Act of 1965 (“SCA”), 41 U.S.C. §§ 6701–6707, as amended (“SCA”), and the implementing regulations at 29 C.F.R. Parts 4, 6, and 18.

On November 7, 2019, counsel for the Administrator filed *Administrator’s Motion to Deem Allegations Admitted and Motion for Summary Decision or in the Alternative, Motion for Default Judgment for Failure to Comply with the Court’s Order* (“*Administrator’s Motion*”).

As to the *Motion for Default Judgment for Failure to Comply with the Court’s Order*, counsel for the Administrator states in pertinent part:

Respondents’ complete failure to respond to the Administrator’s discovery requests and failure to comply with the Court’s Order to [do] so should result in a default decision pursuant to 29 C.F.R. § 18.57(b)(vi).

If a party or a party’s officer, director or managing agent . . . fails to obey an order to provide[] or permit discovery, including an order under [29 C.F.R.] § 18.50(b) or paragraph (a) of this section, the judge may issue further just orders, including rendering a default decision. 29 C.F.R. § 18.57(b)(vi).

In the instant case, the Administrator served discovery requests to both respondents, neither of which provided any responses. On July 9, 2019, the Administrator motioned the Court to compel Respondents [to] serve responses. The Court compelled Respondents’ answers on August 26, 2019, going into great detail that failure to comply with the Court’s order was done so at Respondents’ own peril. As with an earlier January 2019 teleconference, the Court encouraged Respondent[s] to retain the service of qualified counsel.

To date, Respondents have failed to comply with the Court's Order. As discussed in the "Administrator's Motion to Compel," Respondents have made themselves either unreachable via conventional means (telephone), or have simply ignored correspondence sent to them via the mail stream and/or electronic mail. Respondents' failure to comply with the Court's order and the process in general, is a flagrant abuse of the rules.

....

[Based on] the foregoing[,] the Administrator respectfully moves the Court to make and enter judgment against respondents for violations of the Service Contract Act, 41U.S.C. §§ 6703(i), 6703(2), 6703(4), and 29 C.F.R. §§ 4.6(e) and (g), 4.161, 4.162, 4.170(a), 4.173, 4.174, 4.175, 4.183, 4.184, and 4.185. The Administrator also moves the Court to order Respondents to pay the Administrator \$6,779.54 due the service employees and to debar Respondents with the United States for a period of three years. Further, the Administrator moves this Court for a finding that the record is devoid of any unusual circumstances to relieve Respondents for the ineligibility list provisions of the SCA, 41 U.S.C. Section 6706. *Id.* at 15.

Administrator's Motion at 12–13, 15.

Based on the foregoing, on December 17, 2019, I issued a *Show Cause Order*, stating, in pertinent part:

[T]he Respondents are ordered to show cause, in writing, thirty (30) days from the date of this Order why the Administrator's *Motion for a Default Judgement* should not be granted. The entry of a default judgment may result in findings that Respondents violated the SCA and are liable for underpayments and in Respondents being denied the award of any contract with the U.S. government for a period of three years from the publication date of the Comptroller General's debarment list containing Respondents' names.

Order to Show Cause at 2.¹

¹ I attached to the *Order to Show Cause* a *Letter of Absent*, dated December 2, 2019, from the Spiritual Order of St. Micheal written on behalf of the Complainant, which stated in part:

We the Spiritual Order of St. Michael write on behave of our client Matthew Abunis, United States of American and Nigeria citizen. Matthew Abunis brought to us sickness that physical power cannot heal. He has been through this for a while and has been rejected by various hospitals in the USA, London and Nigeria. He turns to the spiritual healing, hoping he will receive his healing from spiritual Order of St. Michael. . . . He stated he has evidence to get himself acquitted on the alleged case. But his health condition is in terrible situation and cannot stand trial at this time. . . . [and]. . . on this note will request you grant Matthew Abunis leave of absent from any court trial or proceed from today 12/02/2019 to 06/23/2021. So, he will continue to receive his treatment until host of heaven heal him of all unknown sickness that has been rejected by doctors.

In response to the *Order to Show Cause*, the Court received a letter dated January 2, 2020, from the Spiritual Order of St. Michael in response to the *Order to Show Cause*, stating in part, the following:

. . . Matthew Abunis has been crying to us day and night over this issue, this has made his health issue worsen. We are writing this letter to protect Mr. Matthew Abunis for not dying due to the stress this case has caused him. . . . We believe you cannot pass judgement to Matthew Abunis who has declared medically unfit to stand any trial. Mr. Matthew has assured us he has the evidence to start trial and present evidence that will acquit him of all the charges against him. We are pleading to your honor to show mercy toward him and extend time to previously requested to enable him to treat himself for all the medical issue and get fit for trial.

*Response to the Order to Show Cause from the Spiritual Order of St. Michael dated January 2, 2020 at 1.*²

DISCUSSION

The regulations at 29 C.F.R. § 6.16(c) provide:

Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

Respondents were expressly warned that failure to respond could result in entry of a default judgment and liability for underpayments; the release of withheld contract funds for the payment of back wages; and Respondents being denied the award of any contract with the U.S. government for a period of three years from the publication date of the Comptroller General's debarment list containing Respondents' names.

Although the letters received by the Court refers to the poor spiritual health of Mr. Abunis, I note there is no evidence from any medical personnel that Mr. Abunis could not have participated in the discovery portion of this proceeding or any trial. I find no good cause to delay my decision.

ORDER

Based on the above, it is hereby **ORDERED** that:

Letter of Asbent at 1.

² I am unable to determine if this letter was sent to all the parties. Accordingly, I have attached a copy of the letter to this *Decision and Order*.

1. The allegations in the November 29, 2017, and February 23, 2018, Complaints are adopted as my findings of fact;
2. Default judgment is entered against Respondents;
3. Respondents are jointly and severally liable for \$6,779.54 in underpayments under the Service Contract Act. If any funds were withheld pursuant to contracts described in the complaints filed by the Department of Labor on November 29, 2017, and February 23, 2018, against the Respondents for the coverage of back wages, they are hereby released to the Administrator of the Wage and Hour Division, U.S. Department of Labor for distribution to affected employees; and
4. Respondents' names shall be placed on the list maintained by the Comptroller General of the United States, of persons or firms having been found to have violated the Act, and therefore having become ineligible, for a period of **three (3) years** from the date of publication on the list, for the award of any contract of the United States.

SO ORDERED.

LARRY S. MERCK
Administrative Law Judge

NOTICE: 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, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service

(eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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). However, if you e-File your petition, only one copy need be uploaded.

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).