

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 February 2012

ARB No: 10-043

Case No.: 2009-STA-00063

In the Matter of:

FERNANDO DEMECO WHITE, *pro se*,

Complainant,

v.

EXPERT MOVING AND DELIVERY, INC.,

Respondent.

ORDER OF DISMISSAL

The above matter is a complaint of employment discrimination under Section 31105 of the Surface Transportation Act of 1982, as amended (STAA). On September 26, 2008, the Complainant filed a complaint with the Occupational Safety and Health Administration alleging that his employment was terminated by the Respondent in violation of the STAA. The case has been referred to the Office of Administrative Law Judges for formal hearing on Appeal by Complainant of the July 1, 2009, Occupational Safety and Health Administration determination that the Complainant's case was without merit.

On December 3, 2009, this Administrative Law Judge issued a "Recommended Order Dismissing Complaint with Prejudice for Failure to Establish a Prima Facie Case and Order Cancelling Scheduled Hearing." The case appeared before the Administrative Review Board (ARB) under the automatic review provision of the then existing 29 CFR §1978.109(c)(1) (1996)¹. The ARB assigned the appeal ARB Case No. 10-043. By "Decision and Order of Remand" of October 26, 2011 the ARB held that "the evidence of record demonstrates a genuine issue of material fact with regard to whether Expert terminated White's employment prior to the

¹ The automatic review provision was replaced by 29 CFR §1978.110(a), effective August 31, 2010. A written petition for review is now required to be filed with the Administrative Review Board within 10 days of the date of the decision by the Administrative Law Judge.

filing of his claim with OSHA, thus precluding the grant of summary dismissal.” The Recommended Decision and Order was vacated and the case remanded for an evidentiary hearing. The case was referred to this office on November 9, 2011 and a formal hearing was scheduled to commence at 8:30 AM, Tuesday, March 20, 2012, in Atlanta, Georgia.

On January 25, 2012, Respondent’s representative filed a “Motion to Dismiss.” In support of the request to dismiss the complaint, Respondent’s representative filed copies of documents from the United States Bankruptcy Court for the Northern District of Georgia, Case No. 10-62941-crm, that indicated that the debtors were officers or managers owning more than 5% interest in Respondent corporation, Expert Moving & Delivery from 2007 through 2010; that the U.S. Internal Revenue Service had closed/ cancelled the federal employer identification number for Respondent company on June 1, 2010 in response to a request made on April 5, 2010; that the Respondent company had ceased to exist as a legal entity in the State of Georgia on August 24, 2011 for failure to file the 2011 annual registration; and that Respondent’s owner, officer and operator, Felix Mbe, had been discharged through bankruptcy on May 20, 2010. Review of the submitted bankruptcy documents reveals that the Respondent company had ceased to operate as a business in 2010 prior to the petition for bankruptcy being filed.

By Order of January 26, 2012, Complainant was directed to Show Cause why the complainant should not be dismissed due to Respondent company ceasing to exist and the company owner and operator being discharged in bankruptcy. The Complainant filed a response on February 1, 2012 stating “I have not found any reason why this matter should not be dismissed by the Court.” He then made additional statements regarding matters unrelated to the discharge in bankruptcy.

When a non-governmental entity, such as a private individual, is pursuing a cause of action under the provisions of the STAA against a private individual or company which is in bankruptcy proceedings, further STAA administrative proceedings are automatically stayed². *Toland v. PST Vans, Inc.*, 93-STA-29 (Sec’y Sept. 7, 1994) The automatic stay continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some sort of relief from the stay. *Haubold v. KTL Trucking Co.*, ARB No. 08-025, ALJ No. 2000-STA-35 (ARB Feb. 27, 2009) Once the respondent company has passed through bankruptcy, the company and officers are considered to be discharged and dismissed from the STAA cause of action unless the Complainant provides evidence showing otherwise. see *Powers v. Paper, Allied-Industrial Chemical & Energy Workers Int’l Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-19 (ARB Aug. 31, 2007)

Review of the bankruptcy documents submitted for consideration establishes that the Respondent Company ceased to exist prior to the owner filing for bankruptcy and that the owner has passed through bankruptcy as of May 20, 2010. Accordingly, Complainant’s appeal and request for hearing, as well as the ARB remand must be dismissed.

² The actions by OSHA on an initial claim are the actions of a governmental entity and not subject to the automatic stay provisions of the U.S. Bankruptcy Code provisions of 11 U.S.C. § 362(a).

ORDER

In view of the foregoing, **IT IS HEREBY ORDERED** that the complaint is **DISMISSED** and the above referenced matter is now considered closed.

A

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia