

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 September 2012

Case No.: 2012-STA-00018

In the Matter of:

ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH,

Prosecuting Party,

and

ROBERT MYERS, *pro se*,

Complainant,

v.

ROWAN BUSINESS FORMS,
RICHARD H. HARDESTY, II,
ROWAN PAPER COMPANY,
JANIS M. HARDESTY HOLDINGS, LLC,

Respondents.

**ORDER APPROVING RESPONDENT'S REQUEST
TO WITHDRAW THE PETITION FOR REVIEW
AND
ORDER DISMISSING THE REQUEST FOR HEARING**

This proceeding arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53

(STAA) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18.

The claim was referred to the Office of Administrative Law Judges for formal hearing upon the appeal filed by the Respondent on February 25, 2012, related to the Regional Administrator, Occupational Safety and Health Administration, Atlanta Regional Office, February 3, 2012, determination that the Complainant's case "was investigated and found to have merit." The Regional Administrator ordered the Respondent to reinstate the Complainant with back pay and benefits; pay the Complainant \$248.40 per week in back wages until a bone fide offer of reinstatement is made or the Respondent's cease all business operations; pay the Complainant interest on the back wage amount as set forth in 26 U.S.C. §6621; pay the Complainant \$30,000.00 in compensatory damages; pay the Complainant \$125.60 in additional compensatory damages for lost Social Security benefits wages until a bone fide offer of reinstatement is made or the Respondent's cease all business operations; pay the Complainant punitive damages in the amount of \$20,000.00; expunge any adverse references to the Complainant's employment discharge from his personnel records; refrain from making any negative reference to the Complainant's employment discharge or related facts in any future request for employment references; refrain from any future retaliation or discrimination directed against the Complainant for instituting proceeding before OSHA; and post an OSHA attached "Notice to Employees" and "Fact Sheet" in a conspicuous and customary place for 60 consecutive days.

By letter dated September 15, 2012, Respondent R.H. Hardesty, II, notified the Court that

"I am withdrawing my request for a hearing before your administrative law court and accepting the charges from OSHA. I am placing the order [of February 3, 2012 from the Regional Administrator, Occupational Safety and Health Administration, Atlanta Regional Office] in my personal Chapter 7 Bankruptcy as originally advised by my bankruptcy attorney. ...

"All of my companies listed as Respondents are defunct entities. All of the corporate assets and building were foreclosed upon by F&M Bank and sold to Graphics International, a used equipment dealer located in Charlotte, NC, to reduce my equipment debt to the bank. I have in excess of \$500,000 of personal guarantees and credit card debt that I am placing in my bankruptcy not including the order [of February 3, 2012]...

"I would like to put this case behind me and move along with what life I have left from my Chapter 7 [bankruptcy]."

Federal regulations at 29 CFR §1978.111(c) provide that "a party may withdraw objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. ... The ALJ, or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or preliminary order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary." By letter dated September 26, 2012, the Solicitor's Counsel averred "Complainant in this matter, has no objection to [Respondent's] withdrawal of his request for a hearing and his acceptance of the charges."

Review of the administrative file reveals that that Rowan Business Forms, Inc. was incorporated within the State of North Carolina (Secretary of State ID number 0126639) with Respondent R.H. Hardesty, II identified as its registered agent, president and treasurer and E.S. Reaves identified as its secretary and last filed an annual report for the fiscal year ending on September 30, 2008. Rowan Paper Co., Inc. was also incorporated within the State of North Carolina (Secretary of State ID number 0126866) with Respondent R.H. Hardesty, II identified as its registered agent, president and treasurer and E.S. Reaves identified as its secretary and last filed an annual report for the fiscal year ending on December 31, 2011. Janis M. Hardesty Holdings, LLC was created within the State of North Carolina (Secretary of State ID number 0507501) with Respondent R.H. Hardesty, II identified as its registered agent and sole manager/member/organizer and last filed an annual report for the year of 2010. All three businesses identify their respective principal office location and address of their registered agent as 500 Vance Avenue, Salisbury, North Carolina and identify their principal office telephone number as (704) 638-3500.

Respondent R.H. Hardesty, II has averred that each of the above Respondent business entities are defunct and that he desires to accept the February 3, 2012 preliminary order of the Assistant Secretary so that it may be entered into his forth coming Chapter 7 bankruptcy proceeding. When bankruptcy proceedings are initiated, further judicial proceedings are required to be suspended until the bankruptcy proceedings are finalized or the presiding bankruptcy Judge orders further action on the suspended judicial proceedings.

Here Respondent R.H. Hardesty has made representation to the Court as officer of the three business Respondents as well as in his individual capacity which accepts the February 3, 2012 preliminary order as the Secretary's final order and renders further judicial proceedings under 29 CFR Part 1978 moot. The prosecuting party has not filed an objection to Respondents' request to withdraw and accept the February 3, 2012 preliminary order of the Assistant Secretary. The Complainant is not prejudiced by the February 3, 2012 preliminary order becoming the final order of the Secretary.

After deliberation on the administrative record, it is hereby **ORDERED** –

1. Respondents' **Request to Withdraw** the petition for review and accept the February 3, 2012 preliminary order is **APPROVED**.
2. **The petition for review and request for hearing is hereby DISMISSED.**
3. **The preliminary order issued on February 3, 2012** as part of the Regional Administrator, Occupational Safety and Health Administration, Atlanta Regional

Office, determination as set forth therein on pages 7 through 8, **is hereby, by operation of law, the Secretary's FINAL ORDER.**

ALAN L. BERGSTROM
Administrative Law Judge