STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO.: CRT 6850-2003S
DCR DOCKET NO.: EP11WB-47626-E

CARL E. MOEBIS, SR.,	)	
	)	
Complainant,	)	
	)	
v.	)	**ADMINISTRATIVE ACTION**
	)	
INTERNATIONAL CORPORATE MARKETING GROUP; PAT RYAN, DIRECTOR OF PLAN DESIGN; AND MICHAEL JANDOLI, VICE PRESIDENT OF SYSTEMS, INDIVIDUALLY,	)	**FINDINGS, DETERMINATION AND ORDER**
	)	
Respondents.	)	

APPEARANCES:

Joseph J. Bell, Esq., for the complainant (Joseph J. Bell and Associates, attorneys)

Gregory T. Alvarez, Esq., for the respondent (Jackson Lewis, attorneys)

BY THE DIRECTOR:

INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by the complainant, Carl E. Moebis, Sr. (Complainant), alleging that his employers, International Corporate Marketing Group, Pat Ryan, Director of Plan Design, and Michael Jandoli, Vice President of Systems (Respondents), unlawfully discriminated against him because of his age, national origin,

and disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On August 17, 2005, the Honorable Solomon A. Metzger, Administrative Law Judge (ALJ), issued an initial decision granting Respondents' motion to issue an order enforcing the terms of a settlement to which the parties allegedly agreed as set forth in an attachment to the motion. Having independently reviewed the record and the ALJ's decision, the Director concludes that Respondents have failed to meet their burden to show that Complainant entered into an enforceable agreement and, therefore, the ALJ improperly granted Respondents' motion to enforce the settlement. Accordingly, the Director orders that the parties attempt to settle this matter or agree to mediate. If after 30 days the parties are unable to enter into an enforceable settlement agreement or have not agreed to engage in mediation, this case will be remanded to the OAL for a hearing.

PROCEDURAL HISTORY

On September 20, 2001, Complainant filed a verified complaint with the Division charging that Respondents violated the LAD by refusing to accommodate his disability because of his of age, national origin, and disability. The complaint was dual filed with the United States Equal Employment Opportunity Commission. Respondents denied the charge by way of a letter dated January 7, 2002.

On September 22, 2003, prior to the completion of the Division's investigation, Complainant requested that the matter be transferred to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 10:5-13 and N.J.A.C. 13:4-12.1(c). A telephone pre-hearing conference was held on December 9, 2003. On July 15, 2005,

Respondents filed a motion to enforce a settlement agreement. On August 17, 2005, the ALJ issued an initial decision granting Respondents' motion and ordering that the terms of the settlement be given full force and effect. Complainant filed *pro se* exceptions on September 1, 2005 alleging that he did not agree to settlement terms, and that his attorney did not respond to his concerns about the proposed settlement agreement.[1] Respondents replied to Complainant's exceptions on October 3, 2005.[2]

THE ALJ'S DECISION

The ALJ summarized the record and found that Respondents had offered to pay Complainant the sum of $2,000.00 in exchange for dismissal of the claim and a general release of claims (ID[3] 2). By letter dated March 5, 2004, Complainant, through counsel, indicated that these terms were agreeable, and a copy of this letter was sent to Complainant. Subsequently, by letter dated April 23, 2004, counsel for Complainant reconfirmed his desire to settle on the terms agreed upon and Respondents forwarded the agreement to counsel on May 4, 2004. The ALJ found that Complainant has been unwilling to sign the agreement, and his attorney has been unable to explain the reasons for his refusal. Ibid.

Relying on Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474 (App. Div.1997), the ALJ found that when seeking to enforce a settlement, the burden rests with the moving party

[1]Complainant's *pro se* exceptions were considered after Complainant informed the Division that he was no longer represented by counsel of record, and did not advise of alternate counsel.

[2]Though Respondents' reply to Complainant's exceptions were received beyond the 5 day deadline established by N.J.A.C. 1:1-18.4(d), the Director will nonetheless address the major points therein.

[3]Hereinafter, "ID" refers to the initial decision issued by the ALJ on August 17, 2005; "Ce" refers to Complainant's exceptions filed with the Division on September 1, 2005; "Re" refers to Respondents' reply filed on October 3, 2005; and "R" refers to Respondents' exhibits.

to show the existence of an agreement, and the party seeking to negate enforcement must then compellingly explain his objections. The ALJ found that the record appears to show that Complainant authorized his attorney to negotiate a settlement and counsel did so. The settlement terms are that Respondents would pay Complainant $2,000.00 and in turn this matter would be dismissed and Respondents would be released from any other claims. The ALJ concluded that since Complainant's counsel acknowledged that an agreement was reached, offered no explanation as to why Complainant refuses to sign the agreement, and filed no response to the motion, the parties reached an enforceable agreement. Accordingly, the ALJ ordered that the settlement agreement as set forth in an attachment to the motion be given full force and effect (ID 2).

EXCEPTIONS AND REPLY

Complainant filed *pro se* exceptions to the Order, which were received by the Division on September 1, 2005. Complainant requested that the Director reverse the findings of the ID, re-open the record, and remand this case to the OAL so that he may represent himself. Complainant alleges that on February 25, 2004, he received correspondence from his counsel which included a copy of Respondents' letter which stated that any offer was contingent on Complainant signing a written statement. Complainant further contends that he subsequently received a letter from his counsel which included settlement terms, and language which stated that he was to "review, if acceptable, sign and return." Complainant maintains that he did not see the terms of the written settlement agreement until he received this letter on May 10, 2004. Complainant had objections to certain terms in the written agreement and refused to sign it (Ce1). Complainant also indicates in his exceptions that his attorney sent him a letter on

November 24, 2004 containing “revised terms of settlement”, which also directed him to “review, if acceptable, sign and return,” but there were no revisions incorporating concerns he had expressed to his attorney (Ce2). In sum, Complainant states that he did not agree to some settlement terms contained in the written agreement, that edited versions of the settlement agreement did not reflect or incorporate his revisions, and that his attorney failed to respond to his inquiries.

Respondents’ reply to Complainant’s exceptions contends: (1) that Complainant did not refute that he authorized his attorney to settle his claim (Re 1-2); and (2) that Complainant’s exceptions failed to specify what his objections are to the settlement agreement (Re 2-3). Respondents assert that the Director should accept the ALJ’s conclusion in the ID because Complainant has not demonstrated fraud or other compelling circumstances; he has merely changed his mind. Respondents also state that to the extent the Director determines that there is a dispute of fact as to whether Complainant authorized the contemplated settlement, Respondents are entitled to cross-examine both Complainant and counsel regarding such matter (Re 3).

THE DIRECTOR’S DECISION

The Director’s Factual Findings

The facts of the claim are limited to the information contained in the record and recited by the ALJ, and are adopted by the Director.

The Legal Standards and Analysis

It is well established that an agreement to settle a lawsuit is a contract which, like all contracts, may be freely entered into and which a court, absent a demonstration of fraud or other compelling circumstances, should honor and enforce as it does other contracts.

Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div. 1983). The initial burden rests on the party seeking to enforce a settlement to prove the existence of a contract. Amatuzzo v. Kozmiuk, supra at 474. If a contract is established, the burden shifts to the party seeking to negate its enforcement to establish the existence of fraud or other compelling circumstances. However, it is only where a contract of settlement is actually held to exist that the party seeking to vacate the settlement must show compelling circumstances. Amatuzzo v. Kozmiuk, supra at 475.

A contract is formed where there is an offer, acceptance, and terms sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty. Graziano v. Grant, 326 N.J. Super. 328, 339 (App. Div. 1999), citing Weichert Company Realtors v. Ryan, 128 N.J. 427, 435 (1992). The contract is enforceable if the parties agree on essential terms and manifest an intention to be bound by those terms. Graziano v. Grant, supra at 340. A settlement agreement should not be enforced where there appears to have been an absence of mutuality of accord between the parties or their attorneys regarding some substantial particulars. Kupper v. Barger, 33 N.J. Super. 491, 494 (App. Div. 1955).

Moreover, the general rule is that unless an attorney is specifically authorized by the client to settle a case, the consent of the client is necessary. City of Jersey City v. Roosevelt Stadium Marina, Inc., 210 N.J. Super. 315, 327 (App. Div. 1986), citing Stout v. Stout, 155 N.J. Super. 196, 203-04 (App. Div. 1977). Negotiations of an attorney are not binding on the client unless the client has expressly authorized the settlement or the client's voluntary act has placed the attorney in a situation wherein a person of ordinary prudence would be justified in presuming that the attorney had authority to enter into a settlement,

not just negotiations, on behalf of the client. United States Plywood Corp. v. Neidlinger, 41 N.J. 66, 74 (1963), citing and quoting J. Wiss & Sons Co. v. H.G. Vogel Co., 86 N.J.L. 618, 621, 92 A. 360 (E. & A. 1914). Therefore, if Complainant's counsel had neither express nor implied authority to settle under the terms proposed by Respondents, it would not be Complainant's burden to demonstrate extraordinary circumstances to defeat Respondents' motion to enforce the purported settlement. Amatuzzo v. Kozmiuk, supra at 475. Instead, on a disputed motion to enforce a settlement, just as on a motion for summary judgment, a hearing is to be held to establish the intentions of the parties unless the available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge, as a rational fact-finder, to resolve the disputed factual issues in favor of the non-moving party. Amatuzzo v. Kozmiuk, supra at 475, citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995) (setting forth standard for review of a summary judgment motion). Applying this standard, the Director finds that the evidence viewed in a light most favorable to Complainant would permit a rationale fact-finder to conclude that Complainant's attorney lacked the authority to agree to the terms of the settlement Respondents seek to enforce.

Complainant's exceptions raise a material and substantial issue as to whether he granted his attorney actual authority to settle on the terms presented in the proposed settlement agreement. Complainant maintains that he did not see the written settlement agreement until May 10, 2004; that he raised concerns about certain terms to his attorney; and that his refusal to execute the written agreement demonstrated that he did not assent to the terms of the proposed settlement agreement. Respondents' counsel's letter dated January 24, 2004 (R-4) and Complainant's counsel's letter of March 5, 2004 (R-5) are

indicative of ongoing negotiations as they remark on so few of the essential terms articulated in the proposed settlement agreement. Respondents' January 24, 2004 letter contained the $2,000.00 settlement term, with the proviso that any offer would be contingent upon Complainant signing a written statement providing for a general waiver and release of claims "and other terms to the Hartford's satisfaction." Complainant's counsel's March 5, 2004 letter stated that Complainant is interested in resolving the discrimination matter, reiterated the $2,000.00 term, but included the contingency that Complainant not be precluded from receiving disability or worker's compensation benefits. Counsel's letter also asks Respondent to "[k]indly forward your form of Settlement Agreement for our review as soon as possible." (R-5). While the contingencies posed by Complainant may have been addressed in the proposed written agreement, there are other essential terms contained therein which may reasonably give rise to Complainant's objections.[4] The Director finds sufficient evidence that Complainant was not informed of essential terms of the settlement agreement, particularly those terms which go beyond the scope of this claim, and certainly those that impact his prospective employment rights and status with Respondents. Therefore, there is sufficient evidence in the record from which a reasonable fact-finder could conclude that Complainant did not agree to the terms of Respondents'

[4]See, e.g., section 1.2d., which prohibits Complainant from ever testifying against Respondents in any judicial or government action; section 1.2f., in which Complainant agrees to never apply for employment with the Hartford or subsidiaries; see also GENERAL RELEASE SECTION which provides that Complainant will not file employment claims against Respondents under a wide range of State and federal statutes including the National Labor Relations Act, the Occupational Safety and Health Act, New Jersey laws regarding political activities of employees, and many other laws unrelated to this action, and that the release and agreement extend to all claims of every nature and kind whatsoever; further, the agreement relinquishes Complainant's right to employment when current disability leave ends; waives his right to bring lawsuit or make legal claim against Respondents for actions by Respondents including claims that may arise from any events during the course of his employment with Respondents; and acknowledges that Complainant has 7 days after signing Separation Agreement and General Release to revoke it.

May 4, 2004 written settlement agreement and, accordingly, did not give his attorney authority to agree to those terms.

Moreover, the letter from Complainant's counsel to the ALJ dated May 27, 2005 (R-12) indicates that Complainant objected to terms of the settlement agreement despite counsel's advice. Counsel's letter bolsters Complainant's contention that at no point during the negotiations did he assent to the terms of the settlement as proposed. Further, the Director finds that Complainant 's failure to identify specific objections to terms of the agreement is insufficient to warrant a finding that the proposed agreement is enforceable. To give the agreement full force and effect, Respondents must demonstrate that the parties agreed on the essential terms of the agreement and that they manifested an intention to be bound by those terms. Respondents failed to do so, and Complainant's exceptions inform the Director that he did not intend to be bound by those terms. Additionally, the inability of Complainant's counsel to specifically convey his objections to Respondent ought to have put Respondents on notice that no meeting of the minds occurred as to the essential terms of the proposed settlement agreement. Critical to the Director's determination here is the scope and breadth of the settlement agreement at issue-a seven page document containing terms that go well beyond the "general release of claims" which the ALJ says Complainant's counsel agreed to in his March 5, 2004 letter (ID 2).

Where the client by words or conduct communicated to the adverse attorney engenders a reasonable belief that the attorney possesses authority to conclude a settlement, the settlement may be enforced. However, the attorney's words or acts alone are insufficient to cloak the attorney with apparent authority. Seacoast Realty v. West Long Branch, 14 N.J. Tax 197, 203 (1994), citing Hallock v. State, 64 N.Y.2d 224, 230 (1984).

Though Complainant's counsel represented to Respondent that Complainant was interested in resolving the discrimination claim, this alone cannot engender a reasonable belief that Complainant's counsel had the authority to settle the claim.

Respondents argue that where the parties agree upon the essential terms of a settlement, even if the mechanics are to be fleshed out in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact that the writing does not materialize prior to a party's later reneging (Re 2, citing Bistricer v. Bistricer, 231 N.J. Super. 143, 145 (Ch. Div. 1987)). The Director finds that though New Jersey has a strong public policy in favor of settlements, this policy may not supersede the personal rights of Complainant to be informed of the essential terms of the proposed settlement agreement prior to agreeing to them.

Applying the applicable legal standards, the Director concludes that Complainant's exceptions in the context of the entire record are sufficient to raise a material and substantial issue as to whether Complainant granted his attorney actual authority to settle this matter according to the terms contained in the written settlement agreement attached to Respondents' motion and found to be enforceable by the ALJ. See Amatuzzo v. Kozmiuk, supra at 476. Complainant's persistent refusal to sign any written version of the agreement with which he was presented supports a conclusion that negotiations between counsels resulted in a proposed settlement agreement, but such negotiations were not binding on Complainant as he did not agree to some of the essential terms contained therein. The record supports Complainant's contention that once the complete terms of the proposed settlement were made known to Complainant, he refused to accept them. Further, the Director finds that since Respondents have not argued that they detrimentally

relied on or acted on the belief that there was a final settlement agreement, the principles of equity do not require a finding that the parties had entered into an enforceable settlement agreement which would constitute a contract.

CONCLUSION AND ORDER

After a thorough review of the record, including the ID, Complainant's exceptions, Respondents' memorandum in support of their motion to enforce the parties' settlement, as well as Respondents' reply, the Director rejects the ALJ's order that the terms of the proposed settlement be given full force and effect. The Director is cognizant of the fact that the ALJ did not have the benefit of Complainant's exceptions and, therefore, was unable to discern from Respondents' evidentiary submissions whether Complainant had objections to the terms of the agreement, and the import of such. Nevertheless, in light of the foregoing, the Director orders that the parties attempt to settle this matter within 30 days. The parties are encouraged to participate in the Division's free mediation program or seek the services of an independent mediator, at Respondents' cost, to assist with settlement efforts. If the parties fail to either settle this matter or agree to engage in mediation within 30 days of this Order, this matter will be remanded to the OAL for a hearing to determine whether the parties have entered into an enforceable settlement contract disposing of Complainant's LAD complaint.

October 18, 2005
DATE

J. FRANK VESPA-PAPALEO, ESQ.,
DIRECTOR, DIVISION ON CIVIL RIGHTS