

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



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IN THE MATTER OF:

EDWARD J. CRUZ,

Employee,

vs.

GUAM FIRE DEPARTMENT,

Management.

ADVERSE ACTION APPEAL
CASE NO. 14-AA12T

DECISION AND JUDGMENT

Office of the Legislative Secretary
Senator Tina Rosas Muela Barnes
Date 4-08-15
Time 4:00
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2015 APR -08 PM 2:36 [Signature]

This matter came before the Civil Service Commission on February 24, 2015, for a hearing on Management's Motion to Dismiss. Present were David J. Highsmith, Assistant Attorney General, representing Management; and the Employee and his attorney, Andrew Perez. The Commission heard oral argument and voted unanimously, 7 to 0, as follows:

1. On April 16, 2014, the Guam Fire Department served a Notice of Proposed Adverse Action on Edward J. Cruz, a GFD employee and a Firefighter II.
2. The Proposed Adverse Action was based on criminal charges against Mr. Cruz, who eventually pleaded guilty in Superior Court in two different cases, CV0394-13 and CF0469-13.
3. The employee and GFD settled this case in writing by executing a "Stipulation for Settlement" and submitting it to the CSC on October 15, 2014. The Stipulation was fully executed by the employee, his attorney, the Office of the Attorney General and the Chief of GFD.

33-15-0318
Office of the Speaker
Judith T. Won Pat, F.I.D.

ORIGINAL

Date: 04-08-15
Time: 4:45 PM
Received By: [Signature]

1 4. The agreement required employee to resign effective April 16, 2014, waive all
2 monetary claims against the government and its officers, and that GFD expunge his file of
3 references to the Adverse Action.

4 5. On October 1, 2014, Mr. Cruz submitted his letter of resignation to the Fire Chief in
5 accordance with said Stipulation for Settlement.

6 6. On October 15, 2014, GFD submitted the Request for Personnel Action to the
7 Department of Administration.

8 7. Mr. Cruz purportedly revoked his consent to his termination on November 12, 2014,
9 the day before the CSC was scheduled to vote on and approve it, and he also requested a hearing
10 on the merits. GFD subsequently filed a motion to enforce the settlement and dismiss the case.

11 ANALYSIS

12 8. GFD contends the Resignation Letter submitted by Mr. Cruz on October 1, 2014, is
13 irrevocable under Guam law and this case is therefore moot and cannot proceed to hearing under
14 4 GCA § 2103.6. Resignations from Positions. This statute appears to apply to appointed
15 positions; however, Guam Personnel Rules and Regulations Rule 13.002 does apply. We also
16 find reason to enforce the settlement on independent grounds.

17 9. Guam courts apply contract principles to settlement agreements. *Blas v. Cruz*, 2009 Guam 12
18 ¶11.

19 10. 18 GCA 89, Article 2 covers rescission of contracts. 18 GCA §89202 states: "A party to a
20 contract may rescind the same in the following cases only:

- 21 1. If the consent of the party rescinding, or of any party jointly contracting with him, was
22 given by mistake, or obtained through duress, menace, fraud or undue influence,
23 exercised by or with the connivance of the party as to whom he rescinds, or of any other
24 party to the contract jointly interested with such party; 2. If, through the fault of the party
25 as to whom he rescinds, the consideration of his obligation fails, in whole or in part; 3. If
such consideration becomes entirely void from any cause; 4. If such consideration, before
it is rendered to him, fails in a material respect, from any cause; or, 5. By consent of all
other parties."

1 11. As noted above, this is not an oral settlement, but one fully reduced to writing and
2 executed by all parties, including the employee and his counsel. The written settlement was then
3 filed with the CSC where a date was set the following month for signing. There is no evidence
4 that the employee's assent was given by mistake, or obtained through duress, menace, fraud, or
5 undue influence of any kind.

6 12. Further, there is no evidence that GFD was breaching the settlement or unwilling to
7 comply with its contractual obligation to expunge the personnel file. Indeed, GFD was and is
8 willing to comply with the settlement and has requested that we uphold and enforce it.

9 13. The CSC was in the process of approving the settlement by promptly scheduling a
10 hearing date for signing. Courts are willing to read "reasonable terms" into a contract. Here, the
11 condition of the settlement that the CSC approve it would logically require that the CSC be given
12 reasonable time to do so. Considering the CSC's schedule and need to comply with Open
13 Government Law, the CSC was moving at a reasonable speed to approve the settlement and no
14 cause existed for employee to consider that the settlement would not be approved. The CSC did
15 not give any indication that it would not approve the settlement.

16 14. As a matter of course, the CSC approves settlements between employee and
17 management in a routine fashion. Unlike a family law case where a court might have an extra
18 duty to consider the welfare of a child in approving a settlement or a class action where the court
19 might have to consider the best interests of the class, the CSC is under no such additional
20 obligation.

21 15. We also note that the employee did not file a motion to rescind the settlement setting
22 forth grounds to do so. The employee's opposition to GFD's motion to enforce the settlement
23 and dismiss this case was effectively two pages of text that failed to cite a single law, case, rule,
24 or decision. Thus, the evidence before us presents the conclusion that the employee's attempt to
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undo the settlement was prompted by nothing other than a unilateral change of heart and there is no legal support to do so.

16. As a general principle the CSC supports the finality of settlement agreements. It would be unfair to a party, such as GFD, who enters into negotiations and executes a good faith settlement agreement with the opposing party and their counsel to have the settlement undone at the whim of another without cause. Such action, as here, will delay resolution of the case. Furthermore, the CSC needs to effectively manage its backlog of cases and schedule in an efficacious manner. Allowing parties to file stipulated settlement agreements that alter our calendar, then alter it again through baseless revocation would encourage tactical gamesmanship amongst parties that would unduly burden our process.


CONCLUSION

17. The Stipulation and Settlement submitted by the parties to the CSC on October 15, 2014, should therefore be enforced.

18. The Commission hereby accepts the Stipulation and Settlement submitted to the Commission. GFD Management shall comply with all the terms of the settlement, including expungement of references to this Adverse Action in Mr. Cruz's personnel file.

19. This case is hereby dismissed with the Commission retaining all jurisdiction necessary to enforce the Stipulation and Settlement.

IT IS SO ORDERED THIS 7th DAY OF April 2015.



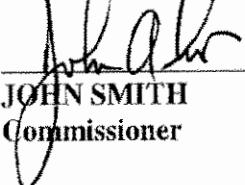
LUIS R. BAZA
Chairman



MANUEL R. PINAUIN
Vice-Chairman



PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner

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LOU HONGYEE
Commissioner

NOT present

DANIEL D. LEON GUERRERO
Commissioner



EDITH C. PANGELINAN
Commissioner