

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue NW, Suite 520N
Washington, D.C. 20004

November 21, 2016

SANDRA G. MCDONALD,
Complainant,

v.

GEORGE KING, MARK TOLER,
GUARDCO SECURITY, LLC, and
NEW TRINITY COAL, INC.,
as successor-in-interest to
FRASURE CREEK MINING, LLC,

Respondents.

DISCRIMINATION PROCEEDING

Docket No. WEVA 2014-387-D
HOPE-CD 2013-10

Mine ID 46-07014 5G1

DECISION APPROVING SETTLEMENT
DISMISSAL ORDER
AND
ORDER TO PAY

Before: Judge Feldman

This case is before me based on a discrimination complaint filed on January 7, 2014, pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3) (2006) (Mine Act). Sandra G. McDonald seeks to recover relief under Section 105(c) of the Mine Act,¹ based on her September 2013 termination of employment by George King and Mark Toler,² who were providing contract security guard

¹ Section 105(c)(1) provides, in pertinent part:

No person shall discharge or in any manner discriminate against ... any miner ... because such miner ... has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent ... of an alleged danger or safety or health violation in a coal or other mine ... or because such miner ... instituted any proceeding under or related to this Act

30 U.S.C. § 815(c)(1).

² McDonald's initial complaint identified her employer as TMK Enterprise Security Services, Inc. ("TMK"). However, the evidence of record reflects that TMK's corporate status was terminated by the state of West Virginia on June 12, 2009. As McDonald began working for TMK in May 2011, McDonald was never employed by TMK, but rather was employed by King and Toler, the former principals of TMK, who were apparently operating their security services business as a non-corporate entity.

services at a mine site operated by Frasure Creek Mining, LLC (“Frasure Creek”). McDonald’s discrimination complaint alleges, *inter alia*, that her employment was terminated following safety complaints concerning the failure of employees to wear hardhats on Frasure Creek property, as well as King and Toler’s failure to provide timely security guard refresher training.

On May 24, 2016, McDonald’s request to amend her complaint to include Guardco Security, LLC (“Guardco”), and New Trinity Coal, Inc. (“New Trinity”) was granted. 38 FMSHRC 1261 (May 2016) (ALJ Feldman). The amended complaint, with regard to Guardco, was granted based upon the following analysis:

The undisputed fact that Guardco has employed Karen Payne as site supervisor for their operations, who was previously employed in the same capacity by King and Toler, for the purpose of performing, essentially, the identical security services performed by King and Toler, provides a colorable claim of successorship to include Guardco as a party at this stage of the proceeding.

Id. at 1263.

Additionally, New Trinity acquired the property of Frasure Creek following a January 2014 Chapter 11 bankruptcy proceeding. Consequently, New Trinity was added as a respondent in this matter as a successor-in-interest to Frasure Creek. *Id.* at 1264-65.

A hearing in this matter was scheduled for September 13, 2016. On September 11, 2016, two days before the scheduled hearing on the merits, McDonald advised that the parties had reached a settlement agreement. On November 4, 2016, McDonald filed a Motion to Approve Settlement and to Dismiss. As terms of the parties’ settlement agreement, McDonald represents as follows³:

- McDonald has withdrawn her complaints against individual respondents George King and Mark Toler. *Mot. to Approve Settl. And to Dismiss*, at 2 (Nov. 4, 2016).
- Guardco agreed to pay \$15,000.00 to McDonald, payable at the time the agreement was signed. *Id.* at Ex. A, p.1.
- Guardco agrees to pay \$10,000.00 to Mountain State Justice for attorney fees in three monthly installments of \$3,333.34, payable on the fifteenth day of October, November, and December 2016. *Id.*
- New Trinity agrees to pay \$15,000.00 to McDonald, in two installments: \$5,000.00 payable on or before October 30, 2016, and \$10,000.00 payable on or before November 30, 2016. *Id.* at Ex. B, p. 1.

³ While neither Guardco nor New Trinity signed McDonald’s Motion to Approve Settlement, on November 7, 2016, counsel for both respondents advised the undersigned via email that their clients agree to the terms of the agreement, as set forth by McDonald.

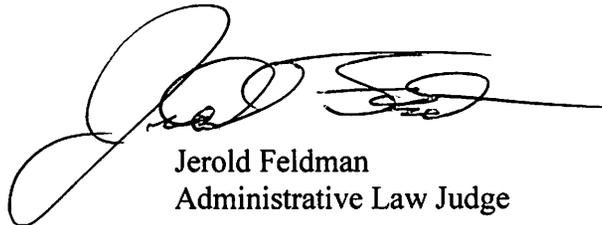
- New Trinity agrees to pay \$10,000.00 to Mountain State Justice on or before October 30, 2016. *Id.*

ORDER

I have considered the representations and documentation submitted in this matter and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion to approve settlement **IS GRANTED**, and pursuant to the parties' agreement, Guardco Security, LLC **IS ORDERED** to pay, consistent with the agreed-upon payment schedule, \$15,000.00 in damages to Sandra G. McDonald and \$10,000.00 to Mountain State Justice in attorney fees. Furthermore, New Trinity Coal, Inc. **IS ORDERED** to pay, consistent with the agreed-upon payment schedule, \$15,000.00 in damages to Sandra G. McDonald and \$10,000.00 to Mountain State Justice in attorney fees.

In sum, Guardco Security, LLC, and New Trinity Coal, Inc. **ARE ORDERED** to pay a total of \$50,000.00 to Complainant Sandra G. McDonald in damages and attorney fees, in accordance with the payment schedule noted above.

Accordingly, Docket No. WEVA 2014-387 **IS DISMISSED**.⁴



Jerold Feldman
Administrative Law Judge

Distribution:

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⁴ McDonald has reported that, to date, New Trinity has failed to make the scheduled payments approved in this Order. The parties' agreed-upon payments constitute the final determination of the relief awarded to McDonald in this matter. Counsel for McDonald may take whatever legal actions deemed appropriate to compel New Trinity to perform as required by this Order.