

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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February 11, 2019

PETE TARTAGLIA, JR.,
Petitioner,

v.

FREEMPORT-MCMORAN BAGDAD INC.,
Respondent.

DISCRIMINATION PROCEEDING

Docket No. WEST 2018-0362-DM
MSHA Case No. RM-MD-18-07

Mine: Freeport-McMoRan Bagdad Inc.
Mine ID: 02-00137

DECISION APPROVING SETTLEMENT UNDER SEAL
ORDER ENFORCING SETTLEMENT AGREEMENT

Before: Judge Simonton

This case is before me pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, (“Mine Act”), 30 U.S.C. § 815(c)(3). Pete Tartaglia, Jr. (“Tartaglia” or “Complainant”) alleges that Freeport-McMoran Bagdad Inc., (“Freeport” or “Respondent”) violated the Mine Act when it terminated him. Tartaglia has since been reinstated and is seeking transfer.

A hearing was held on September 19-20, 2018 in Phoenix, Arizona. The parties reached a settlement at the hearing and read the terms of the agreement into the record. The parties also agreed to confidentiality as to its terms. Respondent produced a written version of the settlement which Tartaglia reviewed and, in fact, signed. In the following months, however, Complainant allegedly encountered other conflicts at the mine and determined that he no longer wished to and was no longer required to adhere to the terms of that agreement. The court held a number of conference calls to address Tartaglia’s concerns, none of which were successful.

On January 14, 2019, this court issued an Order presenting Tartaglia with two options. He could either provide the court with proof that he complied with the settlement terms or he could notify the court and Respondent within seven days of that Order that he wished to submit post-hearing briefs and pursue a decision on the merits. Tartaglia did not comply with that Order and did not notify Respondent or the court of his choice.

On January 25, 2019, Freeport submitted a motion to enforce the settlement agreement as stated on the record and to file that portion of the hearing transcript under seal. Respondent’s Motion to Enforce Settlement Agreement and Motion to File Hearing Transcript Under Seal, at 2-3. Freeport contended that under Arizona state law, Freeport’s offer and consideration and Tartaglia’s recognition and assent to the settlement terms on the record rendered the agreement

enforceable. *Id.* at 3. Freeport thus argued that the court should approve the settlement agreement and enforce its terms as stated in the record. *Id.*

The court acknowledged receipt of Freeport's motion and allowed Tartaglia to respond as to why the settlement should not be approved and this case dismissed. On February 1, 2019, Tartaglia filed a brief response that reiterated that he would not comply with the settlement terms. Tartaglia cited alleged "fraudulent criminal activity" that occurred after the agreement was reached on the record. Complainant's Response to Order of Acknowledgement, at 2.

I find that the agreement on the record is valid and should be enforced accordingly. The Commission and its Judges have the authority to enforce settlement agreements and to reopen those cases in instances of breach. *Morealle v. Veris Gold USA, Inc.*, 38 FMSHRC 410, 413 (Mar. 2016); *Johnson v. Lamar Mining Co. et al.*, 10 FMSHRC 506, 508-09 (Apr. 1998). In order to approve a settlement motion, the record must reflect and the Commission should be assured that the motion in fact represents a genuine agreement between the parties. *Tarmann v. Int'l Salt Co.*, 12 FMSHRC 1291 (June 1990) (ALJ) (citing *Peabody Coal Co.*, 8 FMSHRC 1265, 1266 (Sept. 1986)). The validity of a settlement agreement is generally governed by the applicable contract law of the place where it was made, in this case Arizona. *Golden v. California Emergency Physician Med. Grp.*, 782 F.3d 1083, 1086-87 (9th Cir. 2015); *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992); *Eastern Associated Coal Corp.*, 19 FMSHRC 659, 659-60 (Mar. 1997) (ALJ). Under Arizona law, settlement agreements made orally in court are enforceable. *See Robertson v. Alling*, 237 Ariz. 345, 346 (2015). The state requires a valid enforceable contract to consist of an offer, an acceptance, consideration, and sufficient specification of terms. *See, e.g., Savoca Masonry Co. v. Homes & Son Const. Co.*, 112 Ariz. 392, 394 (1975).

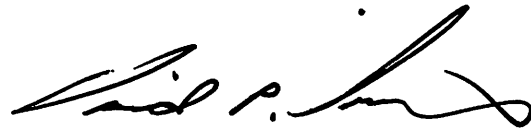
Here the parties' agreement on the record constituted a valid settlement contract. The record unambiguously reflects that Freeport and Tartaglia willingly entered into an agreement to settle the matter. Freeport offered explicit terms in exchange for a general and specific release of claims, which shows offer and consideration. Ex. 1. Tartaglia accepted the offer after a full explanation of those terms. *Id.* There is no evidence that Tartaglia misunderstood the terms of the agreement or declined to accept any of those terms on the record. He subsequently reviewed and signed a written version of the same agreement. There is likewise no evidence that Freeport misrepresented or failed to comply with its responsibilities under the settlement. The parties therefore entered into a valid and mutual settlement agreement.

Tartaglia did not provide any valid legal justification to void or otherwise set aside the agreement. Complainant's allegations of "fraudulent criminal activity" are vague and unrelated to the specific terms of the settlement agreement and to the events that prompted his initial section 105(c)(3) complaint. The record on this matter is closed and the court will not accept new evidence regarding those allegations. The alleged facts behind Complainant's allegations are hence not before the court in any capacity, and the court will not reach those issues in a decision on the merits.

The court therefore finds no good cause to set aside the settlement that Freeport and Tartaglia reached on the record. Valid settlement agreements are binding and must be fulfilled in

good faith. The court will not set aside a settlement or excuse noncompliance and permit a party to tarnish the integrity of the settlement process on a whim. Simply because Tartaglia no longer wishes to adhere to the agreement he made does not mean that he is no longer required to do so.

WHEREFORE, the Respondent's motion for approval of the settlement is **GRANTED**. It is **ORDERED** that Freeport and Tartaglia comply with the terms of the settlement agreement entered into the record, and this case is **DISMISSED**. The agreement made on the record is to be placed under seal with the understanding that it may be subject to review by the Commission.



David P. Simonton
Administrative Law Judge

Distribution: (U.S. First Class Mail and e-mail)

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