FOR PUBLICATION

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

THOMAS B. PANGELINAN, Plaintiff, vs. **THE NORTHERN MARIANAS RETIREMENT FUND**, by and through its Fund Administrator, Karl T. Reyes, Defendant	**CIVIL ACTION NO. 04-0578C** **ORDER AS TO PREJUDGMENT AND POSTJUDGMENT INTEREST**

I. Introduction

THIS MATTER came before the Court for hearing on June 5, 2006, at 9:00 a.m. in courtroom 220A for a final determination of damages in accordance with the judgment of this Court on March 1, 2006, granting in part, and denying in part, the parties' cross-motions for summary judgment. After considering the submissions of the parties with respect to damages, reviewing the pertinent legal authority, and based upon the findings set forth in this Court's order of March 1, 2006, the Court finds that Plaintiff Thomas B. Pangelinan is entitled to an award of $30,646.44, representing the sum of the principal of Plaintiff's annuity benefits that were incorrectly withheld by Defendant Northern Mariana Islands Retirement Fund ("NMIRF") during the period of Plaintiff's eligibility.

II. Procedural Background

On March 1, 2006, the Court issued an Order Granting in Part and Denying in Part Plaintiff's and Defendant's Cross-Motions for Summary Judgment ("Order"). The Court found in favor of the Defendant with respect to the Defendant's principal contention that the Plaintiff was prohibited from receiving government retirement benefits during the period of his post-retirement public service, but also found that the Defendant Retirement Fund withheld benefits during certain periods in which the Plaintiff was entitled to receive them. Paragraph No. 3 of Part IV of the Order provided for damages to the Plaintiff equivalent to his missing payments, to be calculated according to the formula drawn from Article III, section 20(b) of the NMI Constitution. Paragraph No. 6 of Part IV of the Order stated that damages would be calculated with accrued prejudgment interest of 12% per annum, along with post-judgment interest of 9% per annum, and Paragraph No. 7 of the same part required the Plaintiff to serve and submit a Statement of Damages within 10 days.

Plaintiff filed a Statement of Damages on March 22, 2006, wherein he claimed damages of $44,817.17 based upon the principal owed, plus prejudgment and post-judgment interest calculated on a compound basis. Defendant submitted its Reply on April 21, 2006, in which it objected to Plaintiff's calculation of interest on a compound basis, arguing that the general rule was for prejudgment and post-judgment interest to be calculated on a simple basis. Defendant's application of this rule to Plaintiff's damages yielded a total of $37,082.60 in monetary damages. Plaintiff then filed a supplemental Reply on April 24, 2006, arguing that an award of compound interest was appropriate in this case.

After reviewing Plaintiff's Statement of Damages and supplemental reply brief, along with the Defendant's Reply to the Plaintiff's Statement of Damages, and upon further research and consideration, the Court *sua sponte* determined that its March 1, 2006 Order required clarification and amendment. In particular, it appeared that neither party had been able to successfully apply the formula drawn from section 20(b) of Article III, and the Court further discovered through its own research that prejudgment and post-

judgment interest on damages may not be available in this case under the authority of *Library of Congress, et al., v. Shaw*, 478 U.S. 310, 106 S.Ct. 2957, 92 L.Ed.2d 250 (1986), and *Manglona v. Commonwealth*, 2005 MP 15, WL 3771373.

III. Discussion

Post-judgment interest on an award of damages in the Commonwealth is fixed at nine percent per annum from the date of judgment. 7 CMC § 4101. Without a statute or rule specifically setting forth a prejudgment rate of interest, the court applies a reasonable rate under the limitation of 4 CMC § 5301.[1] The Commonwealth Code is likewise silent with respect to the issue of whether interest on damages, or interest *as* damages, are to be calculated on a simple or compound basis.

Neither party cites the Restatement of Contracts in their memoranda, even though the Restatement *does* address this issue. The Restatement states what is sometimes called "the American rule," that, absent an agreement or statute to the contrary, prejudgment interest accrues in the same way as post-judgment interest: "It is payable without compounding at the rate, commonly called the 'legal rate,' fixed by statute for this purpose." RESTATEMENT (SECOND) OF CONTRACTS § 354(1), cmt. a. (1981). This rule has been criticized for failing to fully compensate a successful plaintiff and not all jurisdictions have followed it. *See, e.g., American Nat'l. Fire Ins. Co. v. Yellow Freight Systems, Inc.*, 325 F.3d 924, 938 (7th Cir. 2003). Pursuant to 7 CMC § 3401, however, the Restatement's expression of the position of the majority of jurisdictions is sufficient to settle the question, given that the Commonwealth has no written or customary law to the contrary.

The strikingly more important question is whether or not interest of any kind may be awarded in this case, in light of the longstanding rule of sovereign immunity that prohibits, absent a valid waiver by the

[1] Section 5301 of Title 4 of the Commonwealth Code provides in part: "No action shall be maintained in any court of the Commonwealth… to recover a higher rate of interest than one percent per month on the balance due on… [a] contract involving a principal sum of over $300."

government, an award of interest against the sovereign. The recent case of *Manglona v. Commonwealth* established that the government may be liable for prejudgment interest when it enters into a contract that expressly provides for such damages. 2005 MP 15, ¶¶ 43-44 (Oct. 4, 2005), WL 3771373. In *Manglona*, however, the Commonwealth Supreme Court stated:

> Courts may allow interest as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled even where interest is not stipulated for by contract, or authorized by statute. *Where a sovereign government is a party and interest is not stipulated for by contract or authorized by statute, however, interest is not to be awarded against a sovereign government.*

Manglona, 2005 MP 15 at ¶ 43 (citations omitted) (emphasis added).

The established exceptions to the "no-interest rule" find that the government may be liable for interest *only* in the following circumstances: "1) in a takings case where interest is constitutionally required, 2) where interest awards are specifically provided for in statute or contract or otherwise expressly consented to, and 3) where the Government has cast off the cloak of sovereignty and assumed the status of a private commercial enterprise." *Studio Frames, Ltd., v. Standard Fire Ins. Co.*, 397 F.Supp.2d 685, 686 (M.D. NC 2005). At the June 5, 2006 hearing, Plaintiff was unable to identify evidence or law establishing that his contractual relationship to the Northern Mariana Islands Retirement Fund involved any express waiver of immunity from interest by the government.[2]

A principle of sovereign immunity that developed at law was that any purported waiver by the sovereign must be strictly construed by the courts. "[T]here can be no consent by implication or by the use of ambiguous language." *Thompson v. Kennickell*, 797 F.2d 1015, 1016 (D.C. Cir. 1986); *quoting, U.S. v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 659, 67 S.Ct. 601, 603, 91 L.Ed. 577 (1947). Because an award of interest was historically considered to be an award separate and apart from an award of monetary

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[2] Plaintiff's counsel did argue that the plain language of Article III, section 20(b) of the NMI Constitution is the express waiver. However, this Court disagrees because it fails to expressly state an award of any interest.

damages, it developed that a general consent to suit and to liability for damages by the sovereign would not encompass the sovereign's liability for interest. Instead, to be liable for interest, the sovereign would need to specifically and *expressly* consent to liability for interest through statute or contract. *Library of Congress, et al., v. Shaw*, 478 U.S. at 315; *citing, U.S. ex rel. Angarica v. Bayard*, 127 U.S. 251, 260, 8 S.Ct. 1156, 1161, 32 L.Ed. 159 (1888); *See also*, C. MCCORMICK, LAW OF DAMAGES § 51, pp. 207-208 (1935). In fact, any court award to a successful plaintiff that is in addition to the principal award of damages, such as generally authorized attorney fees or court costs, is subject to the same immunity and may be awarded against the government only after a valid waiver. *In re North*, 94 F.3d 685, 689 (C.A.D.C. 1996); *State v. Chapman*, 407 A.2d 987, 989 (Conn. 1978).

It is true that 7 CMC § 4101 prescribes that "Every judgment…" for money will bear interest at 9%. From a review of the authority cited above, however, the Court concludes that this statute is not specific enough to waive the government's immunity from interest awards. For example, in *Thompson*, *supra*, the fact that 28 U.S.C. § 1961 provides that "Interest shall be allowed on *any money judgment* in a civil case recovered in a district court" (emphasis added) was found to be of no avail to the plaintiffs. *Thompson v. Kennickell*, 797 F.2d at 1017. Likewise, even though section 706(k) of Title VII of the Civil Rights Act of 1964 provided that the government's liability for costs and attorney fees shall be "the same as a private person's," the Supreme Court found that this provision was insufficient to support an award of interest relating to the award of costs and fees. *Library of Congress, et al., v. Shaw*, 478 U.S. at 310.

Also, as a constitutionally-created public entity, the NMIRF is an agency of the sovereign and subject to immunity, even though it may operate in some ways that resemble those of private retirement plans. In *Studio Frames, Ltd., supra*, the district court found that even a *private* insurance company was entitled to claim immunity from interest because its policy was issued pursuant to a government program. *Studio Frames, Ltd.*, 397 F.Supp.2d at 686.

IV. Conclusion

For the foregoing reasons, the Court finds that Plaintiff Thomas B. Pangelinan is entitled to a judgment for the principal amount of $30,646.44, representing the sum of Plaintiff's annuity benefits that were incorrectly withheld by the Defendant, without any prejudgment or post-judgment interest.[3] The previous award of 12% prejudgment interest and 9% post judgment interest stated in the March 1, 2006 Order is hereby reversed and vacated. Total judgment of $30,646.44 in favor of Plaintiff is hereby granted. The Clerk of Court shall enter judgment accordingly.[4]

SO ORDERED this 13th day of June, 2006.

/s/_____
RAMONA V. MANGLONA, Associate Judge

[3] The Court prepared and distributed a calculation sheet at the May 30, 2006, hearing, which the parties stipulated at the June 5, 2006 hearing to be the accurate calculation of the principal amount pension withheld per term.

[4] At the conclusion of the June 6, 2006 hearing, Plaintiff's counsel orally moved for an extension of time to file a motion to reconsider, which was not opposed by the Defendant. The Court noted that a motion to reconsider would be filed under Com.R.Civ.P. Rule 59(e), and that the time limitation therein is jurisdictional not subject to enlargement by the Court. Upon reviewing Com.R.Civ.P. Rule 6(b), this Court concludes that it cannot grant Plaintiff's motion to enlarge, and therefore denies such motion.