

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

DIVISION OF LABOR, DEPARTMENT OF) LABOR AND IMMIGRATION,) COMMONWEALTH OF THE NORTHERN) MARIANA ISLANDS,) Plaintiff,) v.) ROYAL CROWN INSURANCE) CORPORATION,) Defendant.) <hr/>	Civil Action No. 99-0041 ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
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I. PROCEDURAL BACKGROUND

This matter came before the Court on March 3, 1999 in Courtroom D at 9:00 a.m. on Plaintiff's motion for summary judgment. Assistant Attorney General Aaron Williams, Esq., appeared on behalf of the Plaintiff, Division of Labor. Cheong Pui Ng appeared pro se for the Defendant, Royal Crown Insurance Corporation.

II. FACTS

In the underlying administrative action, Plaintiff sought to compel Defendant to pay the proceeds from two surety bonds which Defendant issued for three employees who are "Guest Workers" in the CNMI. The first bond, #7450, in the amount of \$14,100.00, was issued for Cipriano Tabucol, Eduardo Quiambao and three other employees who were not complainants in the underlying action. The second bond, #8646, in the amount of \$11,348.00, was issued for [p. 2]

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Severino Ongtangco and three other employees who were not complainants in the underlying action.

An administrative hearing was held on the matter on February 10, 1998, pursuant to 3 CMC §4444. On February 17, 1998, an Administrative Order was issued ordering Defendant to deliver the proceeds of bond #7450 and bond #8646 to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao. Defendant did not appeal the Order and has not complied with its terms.

On January 20, 1999, Plaintiff filed a Petition to Enforce a Final Administrative Order and a Summons. These were served on Defendant on January 22, 1999. On January 26, 1999, Defendant filed and served an Answer to Plaintiff's Petition.

Plaintiff's Petition seeks to enforce the Administrative Order requiring Defendant to pay the bond amounts to Plaintiff on behalf of the three employees. In addition to the bond amounts, Plaintiff seeks: (1) statutory civil penalties from Defendant in the amount of \$500 per day pursuant to 3 CMC §4447(c); (2) pre-judgment interest payable to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond at the rate of nine percent per annum, and; (3) post-judgment interest payable to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond at the rate of nine percent per annum, pursuant to 7 CMC §4101.

Defendant's Answer does not contest any of the facts alleged in Plaintiff's Petition.

III. ISSUE

1. Whether Plaintiff is entitled to summary judgment against Defendant pursuant to Rule 56 of the Commonwealth Rules of Civil Procedure?

IV. ANALYSIS

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) provides:

A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Com. R. Civ. P. 56(a). [p. 3]

Rule 56(c) continues:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Com. R. Civ. P. 56(c). Defendant's Answer does not contest any of the facts alleged in Plaintiff's Petition. Therefore, the Court finds that there is no genuine issue as to any material fact.

The remaining question before the Court is whether Plaintiff is entitled to judgment as a matter of law. Defendant's Answer to Plaintiff's Petition contests the validity of Plaintiff's underlying administrative claim against bond #7450 and bond #8646. However, the Court will not look to the merits of the underlying administrative action. Defendant had notice and an opportunity to present evidence at the administrative hearing on February 10, 1998. However, Defendant failed to appear. Once again, Defendant had the opportunity to appeal the February 17, 1998, Administrative Order. Once again, Defendant failed to make a timely appeal. 3 CMC §4445(a) states:

Within 15 days of issuance any person or party affected by findings, orders or decisions of the agency made pursuant to Section 4444 may appeal to the Director by written notice. **If no appeal is made to the Director within 15 days of issuance of the original findings, orders or decisions shall be unreviewable administratively or judicially.** (emphasis added) 3 CMC §4445(a).

Therefore, the Court finds that Plaintiff is entitled to judgment as a matter of law and will look only to the Administrative Order issued on February, 17, 1998, to determine if the relief Plaintiff seeks shall be granted.

The Order requires that Defendant deliver the proceeds of bond #7450 and bond #8646 to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao . The Court finds that Defendant shall comply with the Administrative Order and deliver the proceeds of bond #7450, in the amount of \$14,100.00, and bond #8646, in the amount of \$11,348.00, to Plaintiff. Pursuant to the Administrative Order: (1) Cipriano Tabucol is entitled to the sum of \$1,100.00, plus an equal amount for liquidated damages, pursuant to 3 CMC §4447, for a total award of \$2,200.00; (2) Severino Ongtangco is entitled to the sum of \$350.00, plus an equal

amount for liquidated damages, pursuant to 3 CMC §4447, for a total award of [p. 4] \$700.00; (3) Eduardo Quiambao is entitled to the sum of \$2,000.00, plus an equal amount for liquidated damages, pursuant to 3 CMC §4447, for a total award of \$4,000.00.

Plaintiff also seeks statutory civil penalties from Defendant in the amount of \$500 per day from April 8, 1998, the day that Defendant was served with notice of the potential claim, pursuant to 3 CMC §4447(c), which states:

“If any person fails to comply with any provision of this chapter, or any regulation, or order issued under this chapter . . . after notice of such failure and expiration of any reasonable period allowed by the Chief for corrective action, the person shall be liable for a civil penalty of **not more than \$500 for each day** of the continuance of such failure . . . **No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing pursuant to section 4444 of this article.**

3 CMC §4447(c) (emphasis added). The Court finds, pursuant to 3 CMC §4447(c), that Defendant shall pay statutory civil penalties in the amount of \$1.00 per day from April 8, 1998, the day that Defendant was served with the Notice of Potential Claim, to such day as Defendant complies with the Order. Such damages are to be drawn by Plaintiff from the proceeds of Defendant’s bond payment after Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao receive the sums awarded to them in the Administrative Order. The Court will not award the maximum civil penalty due to the fact that Plaintiff will receive an award of \$25,448.00 under bond #7450 and bond #8646, with only \$6,900.00 of that amount going to Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao.

Plaintiff also seeks pre-judgment interest payable to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond at the rate of nine percent per year. The Court will not exercise its jurisdiction to require Defendant to pay pre-judgment interest on each bond.

Plaintiff also seeks post-judgment interest payable to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond at the rate of nine percent per annum, pursuant to 7 CMC §4101, which states that “[e]very judgment for the payment of money shall bear interest at the rate of 9 percent a year from the date it is entered . . . “ 7 CMC §4101. The Court finds that Defendant shall be liable for post-judgment interest to Plaintiff on

behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond payment at the rate of nine percent per year, pursuant to 7 CMC §4101.

V. CONCLUSION

The Court finds that Defendant shall comply with the Administrative Order and deliver the proceeds of bond #7450, in the amount of \$14,100.00, and bond #8646, in the amount of \$11,348.00, to Plaintiff. Pursuant to the Administrative Order: (1) Cipriano Tabucol is entitled to \$2,200.00; (2) Severino Ongtangco is entitled to \$700.00; (3) Eduardo Quiambao is entitled to \$4,000.00.

The Court also finds, pursuant to 3 CMC §4447(c), that Defendant shall pay statutory civil penalties in the amount of \$1.00 per day from April 8, 1998, the day that Defendant was served with the Notice of Potential Claim, to such day as Defendant complies with the Order.

The Court will not exercise its jurisdiction to require Defendant to pay pre-judgment interest on each bond.

The Court finds that Defendant shall be liable for post-judgment interest payable to Plaintiff on behalf of Cipriano Tabucol, Severino Ongtangco, and Eduardo Quiambao on each bond at the rate of nine percent per annum, pursuant to 7 CMC §4101.

For the foregoing reasons, the Court finds there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law. Therefore, Plaintiff's motion for summary judgment is **GRANTED**.

So ORDERED this 5 day of March, 1999.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge