

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION AND JENNY WALTHALL)
FORSYTHE,)

Plaintiffs,)

v.)

ESTES OIL COMPANY, INC. AND EDWARD)
ESTES, an individual,)

Defendants.)

CIVIL ACTION NO. 98-S-0774-NW



ENTERED
JAN - 5 1999

FINDINGS AND RECOMMENDATION

In December 1994 Sonya Morris complained to the EEOC that she had been subjected to sexual harassment while employed by Estes Oil Company. (Document #16, Exhibit 2). On March 31, 1998 EEOC filed this action purportedly to "correct unlawful employment practices and make whole Jenny Walthall, Sonya Morris and a class of females, who were aggrieved by the unlawful practices." (Document #1) (emphasis added). In June 1998, Jenny Walthall, through counsel, filed a motion to intervene. (Document #4/2). Sonya Morris did not attempt to intervene individually in the lawsuit. In late 1998 EEOC attorney Debra Hawes Crook was assigned to represent the Commission. From that time forward, Ms. Crook engaged in a series of telephone conferences and discussions with counsel for Estes Oil. These discussions addressed not only resolution of the class issues but also settlement of the individual claims of Ms. Morris. (E.g., Document #15, Exhibit 3, March 25, 1999 letter from Ms. Crook to the attorney for Estes Oil offering to settle Ms. Morris's claims for \$14,530). A mediation was scheduled for April 6, 1999. Prior to that date Ms. Crook reduced Ms. Morris's monetary demands from \$14,530 to \$12,500 on April 2 and \$12,000 on April

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5. *Id.* It is not disputed that on April 6, 1999 Ms. Crook and counsel for Estes Oil agreed to settle Ms. Morris's claims. Ms. Morris was told by Ms. Crook on the morning of April 6 that because of the settlement, Morris would not be required to attend the mediation in Birmingham.^{1/} By letter dated April 6, 1999 counsel for Estes Oil affirmed that the claims of Ms. Morris would be resolved with the payment of \$12,000. (Document #15, Exhibit #4). Sometime after April 6 Ms. Morris either refused to or did not execute the settlement agreement. On June 3, 1999, through counsel, Ms. Morris filed her application to intervene in this lawsuit. (Document #14). The present Motion to Enforce Agreement (document #15) followed.

A hearing was held on July 13, 1999 to consider both the motion to intervene and the motion to enforce the settlement agreement. (Document #19). On August 6, 1999 the motion to intervene was granted but a ruling on the motion to enforce the settlement agreement was deferred. (Document #21). On July 13, 1999 the court was informed that EEOC had tentatively resolved the class issues pending the resolution of Ms. Morris's claims. The court was also informed that plaintiff Jenny Walthall had not settled her individual claims. At the time of the August 6 order the EEOC class claims were still in existence, albeit at least in part because of the status of Ms. Morris. Also on August 6, 1999 Ms. Walthall had not resolved her individual claims.^{2/}

In the August 6 order the undersigned magistrate judge noted that a hearing would be held to consider whether despite her intervention into the instant lawsuit Ms. Morris was nonetheless obligated to accept the agreed upon resolution of her individual claims. The court

^{1/} Ms. Morris lives some distance from Birmingham.

^{2/} On December 10, 1999 Ms. Walthall resolved her outstanding claims with Estes Oil and upon her own motion the action was dismissed. (Document #33 and #34).

directed the parties to *Puentes v. United Parcel Service*, 886 F.3d 196 (11th Cir. 1996) as general guidelines under which the agreement should be considered. The court observed in the August 6 order that the issue of EEOC's representation of Ms. Morris and/or an agency relationship between EEOC and Ms. Morris would appear to be material to a consideration of the motion to enforce. *Id.* The August 6 order anticipated that testimony would be taken to resolve evidentiary questions which had been suggested by representations made by counsel for Ms. Morris on July 13, 1999. Factual findings made from that testimony as relevant to the present issue are set out below.

- (1) Contrary to the testimony of Ms. Morris the court finds as a matter of fact that Ms. Crook contacted Ms. Morris on at least five occasions from December 1998 through April of 1999.
- (2) Ms. Crook told Ms. Morris that the elements of damages would include compensatory damages for back pay as well as emotional distress.
- (3) Ms. Crook informed Ms. Morris that because Ms. Morris had diligently sought and obtained other employment her actual income damages would be minimal.
- (4) The court finds that from January through April of 1999 Ms. Crook and Ms. Morris discussed monetary settlements focusing almost exclusively upon emotional damages although Ms. Crook told Ms. Morris to gather her pay records and similar information.
- (5) Based upon the testimony of Ms. Crook and Ms. Morris the court finds that Ms. Crook was expressly authorized to engage in settlement negotiations on behalf of Ms. Morris as related to her monetary claims.

- (6) The court finds that Ms. Crook concluded that based upon similar cases and the present lawsuit that the settlement range was between \$12,000 and \$15,000.
- (7) Ms. Crook expressly sought to resolve Ms. Morris's claims for \$14,530 in March of 1999 and subsequently reduced those demands to \$12,500 and finally \$12,000.
- (8) The court finds Ms. Crook's testimony is wholly credible, that throughout this period Ms. Morris was informed that the April 6, 1999 mediation had been scheduled.
- (9) The court finds that Ms. Crook was told on April 6, 1999 that Ms. Morris agreed to a final settlement of her claims in the amount of \$12,000.
- (10) The court expressly finds that Ms. Morris, through Ms. Crook, was told s Oil had offered \$12,000 in final settlement. Ms. Morris did not tell Ms. Crook to seek more than \$12,000.
- (11) The court finds that Ms. Morris knew and understood that Ms. Crook had been authorized to accept, not counteroffer, to the payment of \$12,000 in satisfaction of her individual claims.
- (12) The courts finds that EEOC did not expressly notify Ms. Morris through Ms. Debra Hawes Crook of her right to seek separate counsel until April 1999.^{3/}

^{3/} There is no indication in the record that the attorney who had earlier been assigned to the case had informed Ms. Morris of her right to separate counsel.

In light of the evidence adduced on October 6, 1999 as guided by the principles outlined in the August 6, 1999 order (document #21, pp.8-11) the court is satisfied that Ms. Crook was expressly authorized to resolve Ms. Morris's claim for the amount of \$12,000. The court also finds that there is simply no evidence that Ms. Crook was not acting as "attorney" for Ms. Morris in the relevant period which would render the agreement enforceable pursuant to § 32-3-21, *Alabama Code* (1975). In the event Ms. Crook is not considered to have served as "counsel" to Ms. Morris the court finds nonetheless that Ms. Crook was expressly designated as Ms. Morris's agent and as such Ms. Morris is bound by her April 6, 1999 agreement to settle her lawsuit for \$12,000 despite her later refusal to ratify the agreement.

Accordingly, it is RECOMMENDED that the Motion to Enforce Settlement Agreement reached between Estes Oil Company, Inc. and Sonya Morris on April 6, 1999 as expressed in the letters exchanged by Debra Hawes Crook and counsel for Estes Oil be ENFORCED. Ms. Morris's claims should be resolved pursuant to the agreement and dismissed with prejudice.

The clerk is DIRECTED to serve a copy of the magistrate judge findings and recommendation upon counsel for EEOC, counsel for Estes Oil and counsel for Sonya Morris.

The parties are DIRECTED to Rule 72(b), *Federal Rules of Civil Procedure*.

As to the foregoing it is SO ORDERED this the 3rd day of January, 2000.



PAUL W. GREENE
UNITED STATES MAGISTRATE JUDGE