

ILLINOIS POLLUTION CONTROL BOARD

October 16, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-199
)	(Enforcement - Air)
CHAMPION ENVIRONMENTAL)	
SERVICES, INC.,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On May 23, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint (Comp.) against Champion Environmental Services, Inc. (Champion). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. On September 2, 2008, Champion filed a motion “to Finalize Settlement Agreement” (Mot.) and a memorandum (Memo.) in support of the motion, claiming that a settlement agreement had been entered into and the People were refusing to sign the agreement. On September 18, 2008, the People filed a response (Resp.) in opposition to the motion arguing that no settlement agreement had been reached. For the reasons discussed below, the motion is denied.

The Board will first set forth the facts related to the proceeding and then summarize the arguments of the parties. The Board will then discuss the arguments and explain the Board’s findings.

FACTS

On May 23, 2005, the People filed a two-count complaint against Champion. In the complaint, the People allege that Champion violated Sections 9(a) and 9.1(d) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 9.1(d) (2006)), 35 Ill. Adm. Code 201.141, and 40 C.F.R. §61.145(c)(1), §61.145 (c)(6), and §61.150(b)(1). Comp. at 1-7. The People further allege that Champion violated these provisions by contracting to remove asbestos containing materials from a facility owned by CNH America, LLC, in East Moline, Rock Island County. *Id.*

After the filing of the complaint, Champion disputed the allegations but entered into settlement discussion with the People in November 2006. Memo. at 2, Exh. 1; *see also* Resp. at 1. Those negotiations continued, and on December 5, 2007, a revised stipulation was sent to Champion by the People along with a request that Champion execute the stipulation as soon as possible. Memo. at 3, Exh. 7; *see also* Resp. at 1. Champion executed the stipulation. Memo. at 3, Exh. 8; *see also* Resp. at 1. During negotiations on December 13, 2007, the People requested

that references to the Illinois Environmental Protection Agency (IEPA) be removed but later IEPA was retained in the stipulation. Memo. at 3, Exh. 9 and 10; *see also* Resp. at 2.

In a status conference on March 10, 2008, both Champion and the People indicated to the hearing officer that the IEPA was seeking changes to the stipulation. Memo. at 3, Exh. 11; *see also* Resp. at 2. Neither the IEPA nor the People signed the stipulation executed by Champion. Resp. at 2. On May 20, 2008, the People sent a revised settlement agreement to Champion that removed several provisions from the December 5, 2007 document. Memo. at 3-4, Exh. 12.

CHAMPION'S ARGUMENTS

Champion argues that contract law precludes the People from “reneging on an agreement” that was fully negotiated and finalized. Memo. at 4. Champion asserts that a common occurrence in negotiations is to have the parties agree to settle and one party refuses to sign an agreement. *Id.* Champion insists that the law is clear that the contract is enforceable and settlement agreements fall within the laws of contracts. Memo. at 4, citing City of Chicago Heights v. Crotty, 287 Ill. App. 3d 883, 679 N.E.2d 412 (1st Dist. 1997); Solar v. Weinberg, 274 Ill. App. 3d 726, 653 N.E.2d 1365 (1st Dist. 1995); Sementa v. Tylman, 230 Ill. App. 3d 701, 595 N.E.2d 688 (2nd Dist. 1992).

Champion maintains that under contract law, oral settlements are enforceable if there is an offer, acceptance and a meeting of minds. Memo. at 4, citing Johnson v. Hermanson 221 Ill. App. 3d 582, 582 N.E.2d 265, 267 (5th Dist. 1991) (citing Sheffield Polv-Glaz, Inc. v. Humboldt Glass Co. 42 Ill. App. 3d 865, 868-69, 356 N.E.2d 837, 840 (1st Dist. 1976)). Champion opines that an offer or acceptance must be definitive as to material terms and that the promises and performances of each party are reasonably certain. Memo. at 4, citing Academy Chicago Publishers v. Cheever, 144 Ill. 2d 24, 578 N.E.2d 981 (1991). Further, a meeting of the minds occurs if the parties “assent to the same things in the same sense on all essential terms and conditions.” Memo. at 4-5, citing LaSalle National Bank v. International, Ltd., 129 Ill. App. 2d 381, 394, 263 N.E.2d 506, 513 (2nd Dist. 1970).

Champion asserts that a valid contract exists between Champion and the People because as of December 2007, there was a written agreement detailing all terms and conditions. Memo. at 5. Champion accepted the terms as written and signed the stipulation. *Id.* Champion opines that because a valid contract exists, the parties may not repudiate the agreement. *Id.* Champion argues that as soon as the parties “manifested their intent to conclude the contract,” the fact that the contract was not finally executed does not prevent the contract from operating. *Id.*

To support the argument, Champion points to the *Restatement (Second) of the Law - Contracts*, Section 27, which states:

Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.

Memo. at 5, citing *Restatement (Second) of the Law - Contracts*, Section 27 (1981).

Champion further relies on comments to the *Restatement* which provide:

Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract. Comment a, *Restatement (Second) of the Law - Contracts*, Section 27 (1981).

Champion asserts that the parties unquestionably came to final terms and the drafted stipulation contained all the terms. Memo. at 6. Champion argues that none of the terms were incomplete and the People clearly intended the terms to be final when asking Champion to sign the stipulation. *Id.* Though there was an internal dispute between the IEPA and the People, the People and Champion had fully agreed to the settlement terms. *Id.*

Champion opines that merely because a written stipulation is required to be presented to the Board by rule is not dispositive of this. Memo at 6. Champion maintains that settlement of a case filed with the Board is a two-step process that requires the parties first to come to an agreement and second to present the agreed terms to the Board. *Id.* Champion argues that this is no different then settling a case before the court and the key is the parties' intent. *Id.* Champion asserts that the parties reached a point in December 2007 where the parties intended the agreement to be final and did not intend to invite further negotiations. Memo. at 6-7.

Champion concedes that there is no case law directly on point with this situation but notes that here all the details were final and IEPA is simply trying to renegotiate the settlement. Memo. at 7. In other cases where there is oral agreement on terms but a dispute over the final release, the court analyzes the question of fact "whether parties specified that their agreement hinged on the execution of the written release." Memo. at 7, citing Lampe v. O'Toole, 292 Ill. App. 3d 144, 685 N.E.2d 423 (2nd Dist. 1997). In this instance, Champion maintains that the written document had been finalized and thus the parties have an obligation to execute the final writing and present the settlement to the Board. Memo. at 7. Champion maintains that public policy favors settlement and here the People seek to set the case back two years to renegotiate terms that had been clearly finalized. Memo. at 7-8, citing Johnson v. Hermanson, 221 Ill. App. 3d 582, 582 N.E.2d 265 (5th Dist. 1991).

THE PEOPLE'S ARGUEMENTS

The People deny that an enforceable agreement exists and argue that the proposed stipulation provided by Champion does not constitute a binding settlement agreement. Resp. at

2. The People assert that the draft stipulation has not passed through internal review at the IEPA and the People have not signed the agreement. *Id.* The People concede that the primary terms of the stipulation are those discussed as a settlement matter with the IEPA; however, the IEPA did not review and accept the language in the stipulation. *Id.*

The People point to IEPA v. City of Marion, PCB 71-25 (May 12, 1971) as support for the People's argument. In that case, the People assert the assistant Attorney General agreed to a settlement without consulting the IEPA, and the Attorney General's Office later sent a letter to the Board indicating that the IEPA did not agree with the settlement. Resp. at 2. The People maintain that the Board noted in that case that an attorney is not to settle a case without consent of the client. *Id.* The People point out that the Board relied on procedural rules requiring that no case be settled without a Board order based on a written statement by the parties to the case setting forth the justifications for the settlement. Resp. at 2-3, citing Marion.

The People also note that the Board's current procedural rules at Section 103.202 contain language identical to the language applied by the Board in Marion. Resp. at 3, citing 35 Ill. Adm. Code 103.302. The People opine that under Section 103.202, the Board will not order a matter dismissed until the Board receives and accepts a statement signed by both parties and no such filing is before the Board. *Id.* The People assert that negotiations have not yet reached the point of a signed agreement. *Id.*

The People claim that a case directly on point is IEPA v. Ralston Purina Co., PCB 71-88 (Nov. 23, 1971). In that case, the People indicated that settlement negotiations had taken place over a period of time when a document that purported to be a settlement was filed. Resp. at 4. The People indicate that the Board rejected the settlement because the IEPA, the complainant, had not accepted the settlement and the Board relied on its ruling in Marion. *Id.* The People assert that Ralston is directly on point because the IEPA had not signed the stipulation in the instant case and Champion's own transmittal letter acknowledges that the IEPA was considering the stipulation. Resp. at 4; *see also* Mot. at Exh. 8.

The People assert that the language of the draft stipulation indicates that the agreement is not final until signed and submitted to the Board and then accepted by the Board. Resp. at 4. The People note that the signature lines remain blank reflecting the need for the document to be reviewed and signed by both the IEPA and the Attorney General's Office. Resp. at 5. Further, the People maintain that only when the Board enters an order approving and accepting the stipulation does the stipulation become an enforceable order. Resp. at 4.

The People opine that the documentation provided by Champion "tends to show how very contentious all the language in the draft has been." Resp. at 5. The People assert that the IEPA has not been continuously involved in the discussions and the draft has been modified by the IEPA and the People during the discussions. *Id.* The People state that when the latest draft, signed by Champion, was submitted to the IEPA, the IEPA declined to accept the version and offered changes. *Id.* The People take note that a majority of the terms have not changed, the penalty amount has not changed and the parties agree no additional work need be performed at the site. Resp. at 5-6. The People disagree that the continuing negotiations "turns back the clock" by two years. Resp. at 6.

The People take issue with the arguments by Champion that contract law establishes the stipulation was an enforceable agreement. Resp. at 6. The People maintain that the documentation provided by Champion establishes that there has been a significant amount of back and forth between the attorneys, including at least two versions of a draft stipulation. *Id.* The People assert that the mere title of the document demonstrates that the document is more than “a mere contract” and therefore not subject to a contract interpretation alone. *Id.* The People assert that the negotiations were continuing and that merely agreeing on a penalty amount is not the end of negotiations of this type. *Id.* The People claim that there has been no meeting of the minds. *Id.*

The People note that there are no circuit court cases on point, but the settlement specifically states conditions that must be met before the agreement is final. Resp. at 7. The People argue that the document makes clear the stipulation is not effective until signed by both parties. *Id.* Further, the document is both a settlement and a stipulation and this language demonstrates that there was no “meeting of the mind” until the document is formalized, signed and entered. *Id.* The People argue that negotiations continued and various levels of management for the Attorney General’s Office and IEPA reviewed the changes; however, the individual attorney is not a signatory to the agreement and cannot sign on behalf of those entities. *Id.* Thus, the People disagree that there is a final settlement agreement and argue that until all parties sign the agreement, the stipulation is not final. *Id.*

DISCUSSION

Section 31(c)(2) of the Act allows the Board to accept stipulations and proposals for settlements from the parties when the IEPA or the People are complainants. 415 ILCS 5/31(c)(2) (2006). The Board’s procedural rules state:

No proceeding pending before the Board will be disposed of or modified without an order of the Board. A proposed stipulation and settlement agreement must contain a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. 35 Ill. Adm. Code 103.302.

The Board’s procedural rules then detail the information to be included in the stipulation and settlement agreement which includes: 1) a full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations proposed to be settled; 2) the nature of the relevant parties’ operations and control equipment; 3) facts and circumstances bearing upon the reasonableness of the discharges; 4) details of future plans for compliance; and 5) the proposed penalty. 35 Ill. Adm. Code 103.302(a)-(e). Thus, the Act and the Board’s rules clearly delineate the content and form of stipulations and settlements.

The document presented to the Board by Champion clearly does not meet the requirements of the Board rules. The signed agreement only has the signature of Champion and not of the Attorney General or the IEPA. *See* Exh. 8. Champion argues that the fact that the Board’s rules require a signed agreement is not dispositive of this case (Memo at 6); however,

the Board disagrees. The Board's rules are clear and unambiguous and require that "a proposed stipulation and settlement agreement *must* contain a written statement, *signed by the parties*". 35 Ill. Adm. Code 103.302 (emphasis added). The parties have not filed a stipulation and settlement agreement signed by the parties. Therefore, the Board will not accept the stipulation filed by Champion as the stipulation does not meet the requirements of the Board's rules. *See, e.g., Marion and Ralston.*

Furthermore, the Board is unpersuaded by Champion's arguments that the laws of contract require a finding that an agreement was completed in this case. The March 6, 2008 letter accompanying the signed stipulation notes that the IEPA has not signed the agreement. Exh. 8. The March 10, 2008 hearing officer order also indicates that the IEPA was seeking changes to the agreement. Exh. 11. The May 22, 2008, emails show that Champion's attorneys believed an agreement was in place (Exh. 12); however, the IEPA had not signed off on those changes and the document reflected additional changes requested by IEPA. Thus, the Board is not convinced that the record establishes an agreement had been reached.

The Board finds that an agreement was not reached and that a proper settlement has not been filed with the Board. The Board therefore denies Champion's motion to finalize settlement because no settlement agreement, properly executed, is before the Board.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board