

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

YOLANDA HERNANDEZ, ESTELA))
GUZMAN, AMPARO LAGUNAS))
AND MARIA HAYNIE,))
Complainants,))
))
UNITED STATES OF AMERICA,))
Intervenor,))
))
v.) 8 U.S.C. § 1324b Proceeding
) Case No. 95B00044
FARLEY CANDY CO.,))
Respondent.))
_____))

ORDER OF DISMISSAL SETTLED, IN PART
(October 25, 1995)

On October 24, 1995, following extensive telephonic prehearing discussion, including emergency conferences on October 17 and October 23, 1995, Complainants, by counsel, together with Respondent by counsel, filed a Joint Motion to Dismiss. Reciting that Complainants and Respondent "have reached a settlement agreement with respect to this matter, the terms and conditions of which have been forwarded to the Administrative Law Judge under separate cover," the Motion requests that the Complaint be dismissed with prejudice. Copies of the four agreements executed by the individual parties, previously filed, each recite a sum certain payable to the individual Complainant, and to her attorney, and in three of the four cases provide for reinstatement as there described. Each agreement also recites Respondent's acknowledgment that the posture of Special Counsel for Immigration Related Unfair Employment Practices (OSC), Intervenor, is separate and distinct from that of the Complainant and survives the settlement between the Complainant and Respondent. Both OSC and I agreed that the interests of OSC and of 8 U.S.C. § 1324b Complainants are not identical.

During the October 23 conference, counsel for OSC insisted that it obtain some quantum of civil money penalty as the price for its acquiescence in dismissal of the Complaint. In light of the suggestion that I might lack authority to dismiss OSC's claim, it is understood that Respondent will file an appropriate dispositive motion with offer of proof appended, to which OSC may file a prompt response.

Upon my expressing my predilection not to disturb the settlement agreed to by the individual Complainants so as to allow them to be promptly paid and for three of them to return to work immediately, OSC pointed out its concerns that the individual Complainants were not obtaining as high a cash settlement as OSC gauged they should.

OSC also referred to the confidentiality undertaking for breach of which a Complainant could be subject to action to forfeit the settlement proceeds and job reinstatement. Upon my inquiry in this respect, counsel for Complainants stated an assurance that she had addressed this provision and translated it in dialogue with the Complainants, each of whom acquiesced. She advised also that the confidentiality provision is less onerous than had been prior alternatives.

In order to give effect to the intent of the parties as reflected in the Agreements, this Order dismisses with prejudice so much of the Complaint as alleges a cause of action on the part of the individual Complainants. I reserve judgment as to whether and on what conditions it remains appropriate for OSC to maintain its cause of action as Intervenor. The parties are advised that their filings as contemplated above should address the viability and reasonableness of continuing this case at the instance of OSC. It may be helpful if they were to discuss the bases on which to dispose of OSC's interests without need for a confrontational evidentiary hearing. Meanwhile, the trial dates of November 30 - December 2, 1995 remain undisturbed.

SO ORDERED.

Dated and entered this 25th day of October, 1995.

MARVIN H. MORSE
Administrative Law Judge