CASE NO. 5735 CRB-8-12-2 : COMPENSATION REVIEW BOARD
CLAIM NO. 800118886

JOYCE SNYDER
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: FEBRUARY 27, 2013

GLADEVIEW HEALTHCARE CENTER
EMPLOYER

and

ARROWPOINT CAPITAL CORPORATION
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Kenneth J. McDonnell, Esq., Gould, Larson, Bennet, Wells & McDonnell, P.C., 30 Plains Road, Essex, CT 06426.

The respondents were represented by James D. Kuthe, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 1010 Washington Boulevard, Stamford, CT 06901.

This Petition for Review from the February 2, 2012 Finding and Dismissal of the Commissioner acting for the Eighth District was heard August 17, 2012 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Jodi Murray Gregg and Ernie R. Walker.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has appealed from a Finding and Dismissal where the trial commissioner determined that he lacked legal authority to enforce a settlement agreement allegedly reached between the claimant and the respondent. In denying the relief sought by the claimant, the trial commissioner noted that she died prior to the formal hearing and the respondent had not executed the settlement documents prior to her death. The claimant's surviving spouse argues that our legal precedent was inconsistent with the commissioner's decision. We have reviewed the relevant precedent and we are satisfied that the trial commissioner reached the correct decision as the agreement in question had not been executed by both parties prior to the hearing. We affirm the Finding and Dismissal.

The commissioner reached the following factual findings. The claimant suffered a compensable injury on January 22, 1997 which led to voluntary agreements approved on June 30, 2004 and November 12, 2008. The claimant, who had worked as a nurse, never returned to gainful employment following a 2000 surgical procedure. She attained maximum medical improvement on July 17, 2006 with a 70% permanent partial disability. Counsel for the claimant and respondent engaged in prolonged settlement discussions and in January 2011 agreed in principal to a $108,161 settlement amount, which was reduced to writing. The parties experienced long delays prior to arriving at this amount, in part due to the MSA/CMS process. On February 5, 2011 the claimant died for reasons unrelated to the compensable injury.

The commissioner noted that the settlement was never properly before a commissioner nor was it approved prior to the claimant's death, nor did the respondent sign the settlement documents. Findings, ¶ 6. The claimant's surviving spouse sought the enforcement of the agreement and sought an order and award from the Commission. The respondents argued that the agreement was not enforceable as it was not executed by the respondents or approved by the Commission prior to the claimant's death.

The trial commissioner concluded that it was well settled that in the absence of express approval by the Commission a settlement is not enforceable. The commissioner noted that while it was unfortunate the claimant died before the settlement was executed, there had been a number of occasions where claimants had a change of heart before the agreement was approved by the trial commissioner, or found the terms not acceptable. The trial commissioner denied enforcement of the agreement and dismissed the claim.

Counsel for the claimant filed a Motion to Correct, seeking to add representations that the respondent refused to execute the document only after learning the claimant had died. The trial commissioner denied this correction. The present appeal was pursued, where the primary argument advanced is that precedent in O'Neil v. Honeywell, Inc., 66 Conn. App. 332 (2001) compelled the trial commissioner to approve this agreement. The respondents argued that the precedent in Schiano v. Bliss Exterminating Co., 260 Conn. 21 (2002) was more congruent to the issues herein. As this case turns on the interpretation of law, we must weigh the arguments presented.

We generally provide some degree of deference to a trial commissioner's judgment on appeal. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us

is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003). We must, however, review how a commissioner applies the law, as "[t]his presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The trial commissioner concluded that the law in these matters was "well settled that in the absence of express approval by the Commission a settlement is not enforceable." Findings, ¶ 10. There is support for this position from decades of precedent. See Welch v. Arthur A. Fogarty, Inc., 157 Conn. 538 (1969). "Approval of such a stipulation by the commissioner is not an automatic process. It is his function and duty to examine all the facts with care before entering an award, and this is particularly true when the stipulation presented provides for a complete release of all claims under the act." Id., 545. Therefore, the trial commissioner must perform his or her own inquiry into the terms of a proposed stipulation, and not merely accept at face value a party's representation that the agreement in question represents a meeting of the minds between the contracting parties.

Claimant's counsel argues that the settlement in question was fully agreed to by both parties prior to the hearing and that the trial commissioner should not have declined to approve the agreement. In Findings, ¶ 11, the trial commissioner noted that in many cases a party who appeared to have approved an agreement decided prior to the hearing to withdraw its approval. Such was the situation in a case which is closely on point, Drozd v. State/DMR, 5158 CRB-5-06-11 (October 19, 2007). In Drozd, the respondent

had apparently reached a settlement with a claimant, but at the hearing when the agreement was to be approved counsel for the respondent said his clients did not authorize the agreement. The claimant, who had traveled to the hearing from Florida, demanded that the agreement be enforced. The trial commissioner declined to do so based on reliance on § 31-296 C.G.S.[1] On appeal the Compensation Review Board affirmed this decision, relying in large part on Schiano, supra.

> In addition, we find the claimant's demand for relief inconsistent with our statute. The relevant statute, § 31-296 C.G.S., makes clear that this type of agreement is not enforceable until it has been reduced to writing and has been approved by the trial commissioner. The issues involved in Schiano v. Bliss Exterminating Co., 260 Conn. 21 (2002) are illustrative of the issues before us today. In Schiano, we concluded that since a binding agreement had not been executed between the parties that the trial commissioner retained jurisdiction to determine the claim. The Supreme Court upheld this conclusion for the following reasons:
>
> The review board determined that the claim had not been rendered moot and, therefore, that the commissioner had jurisdiction to decide whether the fund was required to pay the penalty on the attorney's fees pursuant to § 31-303. The review board reasoned: "Under the [act], an agreement between parties concerning the payment of disability benefits, medical expenses, or attorney's fees

[1] The relevant statutory language is as follows:

Sec. 31-296. Voluntary agreements.(a) If an employer and an injured employee, or in case of fatal injury the employee's legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this chapter in every regard, the commissioner shall so approve it. A copy of the agreement, with a statement of the commissioner's approval, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. The commissioner's statement of approval shall also inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program under the provisions of this chapter. The commissioner shall retain the original agreement, with the commissioner's approval thereof, in the commissioner's office and, if an application is made to the superior court for an execution, the commissioner shall, upon the request of said court, file in the court a certified copy of the agreement and statement of approval.

> is subject to the approval of the trial commissioner. . . . Once the parties have invoked the jurisdiction of this agency, any resolution of pending issues involving the payment of compensation must be ratified by the commissioner in order for it to constitute a binding judgment. A settlement is not self-actuating, and does not by its mere existence implicate the trier's subject matter jurisdiction. . . . Instead, the parties must present their contractual compromise to judicial authority, so that he or she may review the agreement and consider entering judgment accordingly. . . . This requires that the parties successfully communicate their intent to settle the case before the commissioner releases his decision." (Citations omitted.) Because there was "no demonstrable proof that the trial commissioner knew or should have known of the parties' putative settlement before he issued his decision," the review board concluded that the commissioner had jurisdiction to issue his decision.
>
> We agree with the well reasoned analysis of the review board. See Muldoon v. Homestead Insulation Co., 231 Conn. 469, 480, 650 A.2d 1240 (1994) "[a]s in the case of a voluntary agreement, no stipulation is binding until it has been approved by the commissioner"); see also General Statutes § 31-296 (requiring commissioner's approval of voluntary agreements); General Statutes § 31-296a (requiring commissioner's approval prior to employer's discontinuance or reduction of payments under oral agreement if employee claims continuing disability). Id., 31-32.

Notwithstanding the Schiano precedent, counsel for the claimant argues that O'Neil, supra, compels this panel to direct that the agreement before the trial commissioner be approved. We do not agree as the case herein is factually distinguishable from O'Neil. In O'Neil both the claimant and the respondent had executed the settlement agreement in September 1996 and the executed stipulation was delivered to the Commission on October 4, 1996, which was the same day as the claimant's death. Id., 334. After the agreement was approved at a hearing where the respondent did not attend, they moved to reopen the agreement asserting lack of notice and that they now opposed approval of the agreement. This motion was granted and the

Compensation Review Board affirmed that decision. On appeal, the Appellate Court reversed that decision. They found the respondents argument that the agreement should be reopened due to a "mistake" pursuant to § 31-315 C.G.S. to be unpersuasive.

> We conclude that the commissioner did not have authority to grant the fund equitable relief under § 31-315 because there is no evidence that the fund was prevented from making a defense by fraud, accident, mistake, surprise or improper management of the opposite party. Paragraph eighteen of the signed stipulation agreement unequivocally states that ''[i]t is agreed by and among the parties hereto that this stipulation was not induced nor entered into by fraud, accident, mistake or duress . . . .'' Moreover, under the recognized grounds for equitable interference previously cited, neither the court nor the plaintiff had a duty to inform the defendant of the approval hearing and **the claimant's death *after* the agreement was signed,** and their failure to do so could not have affected the defendant's ability to make a defense because the parties already had reached a ''full, final and complete'' settlement of all claims arising from the injury. Accordingly, there is no equitable ground under § 31-315 on which to provide the relief requested. (Emphasis added.)

Id., 339.

We believe the trial commissioner could reasonably have concluded that the precedent in O'Neil was inapplicable to an agreement which had not been executed by both parties prior to its submission to the Commission for approval.[2] The reasoning in O'Neil was that once a party executed an agreement, and affirmatively represented it was reached openly and fairly, one was estopped from subsequently trying to set the agreement aside claiming it was reached by means of fraud or mistake. In the present circumstance, the trial commissioner placed weight on the fact the respondents never

[2] We also note that in Leonetti v. MacDermid, Inc., 5623 CRB-5-11-1 (March 19, 2012) we ruled an agreement that attempted to resolve a workers' compensation claim as part of a larger severance package that was not submitted to the Commissioner for approval was void and unenforceable as to Chapter 568.

executed the agreement while the claimant was alive, and declined to execute it after her death. We decline to apply the O'Neil precedent to a case where the trial commissioner never approved the original agreement.

In O'Neil the Appellate Court distinguished the case on the facts from Secola v. State/Comptroller's Office, 3102 CRB-5-95-6 (February 26, 1997). O'Neil, supra, 341-342. We believe Secola is supportive of the commissioner's decision herein. In Secola "the commissioner specifically found that the respondent was no longer in agreement with the stipulation at the time it was submitted for approval. " Id. In O'Neil the agreement had been presented to the Commission fully executed by the respondent, who could not then belatedly rescind their approval. Claimant's counsel herein argues that Secola hinged on equitable considerations and that it would not be inequitable under the facts in this case to enforce the agreement against the respondents. We disagree. Our holding in Drozd, supra, stands for the proposition that even if a respondent acts inequitably in not executing a settlement agreement, a trial commissioner lacks the authority to enforce it against them absent their consent.[3] In addition, we will not usurp the fact-finding province of a trial commissioner, who is the ultimate judge of whether a party's conduct before this Commission comports with equity.

[3] The claimant's counsel argues that had they not informed the respondents of the claimant's death the agreement would have been executed by the respondents who would have assented to the Commission's approval. Appellant's Brief pp. 9-10. We are troubled by the implications of this reasoning wherein a party that failed to exercise candor before the tribunal would be benefited. While the truth may work to a party's disadvantage in an individual dispute, fidelity to veracity is a prerequisite to any system of justice. A lack of candor can never be equitable. We also note that in O'Neil v. Honeywell, Inc., 66 Conn. App. 332 (2001) the agreement in question was submitted to the Commission for approval at a point when all parties believed the claimant was still alive, as he died the day it was received by the Commission. In the present case, the claimant was known to be dead prior to the Commission having an opportunity to act on approving the settlement.

We believe a trial commissioner may properly determine, that when an agreement which is not executed by both parties is presented to the Commission for approval it is axiomatic that both parties must assent to its approval at that hearing. The trial commissioner herein reviewed the circumstances herein carefully, and provided a clear rationale for his decision not to approve the settlement. As the conclusions of the trial commissioner are consistent with precedent, they are not contrary to law.[4] Therefore, we must affirm the Finding and Dismissal.

Commissioners Jodi Murray Gregg and Ernie R. Walker concur in this opinion.

[4] As the commissioner denied the claimant's Motion to Correct, we may infer that he found the claimant's evidence was not persuasive or probative, Brockenberry v. Thomas Deegan d/b/a Tom's Scrap Metal, Inc., 5429 CRB-5-09-2 (January 22, 2010), *aff'd*, 126 Conn. App. 902 (2011) (Per Curiam). The trial commissioner is not obligated to accept those corrections sought to interpose the claimant's conclusions as to the law and the facts presented, Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006) and D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003).