CASE NO. 6091 CRB-4-16-4 : COMPENSATION REVIEW BOARD
CLAIM NOS. 700114582, 700117212,
700134771

EDWARD FRANTZEN : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : FEBRUARY 21, 2017

DAVENPORT ELECTRIC
EMPLOYER

and

OHIO CASUALTY INSURANCE COMPANY
INSURER

and

AMERICAN STATES INSURANCE COMPANY
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The interests of the claimant from July 13, 2007 to May 8, 2014 were represented by Enrico Vaccaro, Esq., 1057 Broad Street, Bridgeport, CT 06604.

The interests of the claimant from March 18, 1998 to April 1, 2005 were represented by Adam Blank, Esq., Wofsey, Rosen, Kweskin & Kuriansky, LLP, 600 Summer Street, Stamford, CT 06901.

The respondents were not involved in the proceedings below and did not appear at oral argument.

This Ruling Re: Reconsideration of the October 21, 2016 Order of the Compensation Review Board Granting Appellant's Motion for Stay was heard on November 18, 2016 before a Compensation Review Board panel consisting of Commissioners Ernie R. Walker, Nancy E. Salerno, and Christine L. Engel.

RULING RE: RECONSIDERATION OF THE OCTOBER 21, 2016 ORDER OF THE COMPENSATION REVIEW BOARD GRANTING APPELLANT'S MOTION TO STAY

ERNIE R. WALKER, COMMISSIONER. The issue before this board arises from a fee dispute between Enrico Vaccaro, Esq., [hereinafter "appellant"] who represented the interests of the claimant from July 13, 2007 to May 8, 2014, and the law firm of Wofsey, Rosen, Kweskin & Kuriansky, LLP, [hereinafter "appellee"] which represented the interests of the claimant from March 18, 1998 to April 1, 2005.[1] The fee dispute is currently the subject of an appeal pending at the Connecticut Appellate Court. The limited issue presently before this board is the reconsideration of this board's October 21, 2016 Order granting the appellant's Motion to Stay.[2]

The somewhat tortured procedural history of the matter thus far is as follows. On February 19, 2015, Michelle D. Truglia, Commissioner acting for the Seventh District, issued a Finding and Award in which she found, *inter alia*, that (1) the Connecticut Workers' Compensation Commission [hereinafter "Commission"] had subject matter jurisdiction over an attorney's fee dispute between claimant's former and current counsel; and (2) the fee, in the amount of One Hundred Seventy Thousand Dollars ($170,000.00), should be apportioned equally between the appellant and the appellee. In its Opinion of February 24, 2016 [hereinafter "Frantzen I"], this board affirmed the findings of the trial commissioner as to subject matter jurisdiction. However, in light of the board's concerns

[1] We note that several members of Wofsey, Rosen & Kuriansky, LLP, have appeared in this matter; in the interests of simplicity, we refer to all of them as the "appellee."

[2] As discussed more fully herein, this board heard no objection to its October 21, 2016 ruling granting the appellant's Motion to Stay. In light of the appellee's contention, *inter alia*, that it was not apprised of the appellant's Motion to Stay before it was filed, the appellee's objection is therefore being considered as a motion for reconsideration of the board's October 21, 2016 Order granting the appellant's Motion to Stay.

that the trier's findings as to apportionment had gone beyond the scope of the inquiry noticed for the formal hearing, the board vacated the trier's conclusions relative to the apportionment of the escrowed funds and remanded the matter for a full evidentiary hearing.[3] *See* Frantzen v. Davenport Electric, 5990 CRB-7-15-2 (February 24, 2016), *appeal pending,* AC39009.

On March 22, 2016, a second formal hearing was held before the Commission, resulting in the March 30, 2016 Ruling on Remand from the Compensation Review Board of Michelle D. Truglia, the Commissioner acting for the Seventh District. The trial commissioner made the following findings which are pertinent to our review.

A hearing notice was sent to all parties in February, 2016 informing them that a formal hearing had been scheduled for March 22, 2016 on the issue of apportionment of the One Hundred Seventy Thousand Dollars ($170,000.00) in attorneys' fees being held in escrow by the appellant.[4] On Wednesday, March 16, 2016, the appellant faxed correspondence to the Commission's fourth district office stating that he could not attend the formal hearing scheduled for March 22, 2016 because he had a Superior Court trial scheduled for March 21, 2016. The trial commissioner requested that confirmation of the scheduling conflict be faxed the same day; however, the appellant never responded. During the six-day period prior to the March 22, 2016 formal hearing, the Commission's

[3] In Frantzen I, we remarked, "the statements made by the Commissioner at the formal hearing of September 30, 2014 seem to suggest that, consistent with the hearing notice, her inquiry would be limited solely to a determination as to whether the Commission had authority to adjudicate the fee dispute. Thus, in light of the due process concerns raised by the issuance of findings which fell outside the stated scope of the inquiry, we have little choice but to vacate the trier's conclusions relative to the apportionment of the escrowed funds and remand this matter for a full evidentiary hearing on the issue." Frantzen v. Davenport Electric, 5990 CRB-7-15-2 (February 24, 2016), *appeal pending,* AC39009.

[4] Judith Rosenberg, Esq. and Patricia Carreiro, Esq., of Wofsey, Rosen & Kuriansky, LLP, represented the interests of the claimant from March 18, 1998 to April 1, 2005; Allan Cane, Esq., represented the interests of the claimant from April 27, 2005 until the substitution of a new attorney on July 13, 2007; the appellant represented the interests of the claimant from July 13, 2007 until May 8, 2014. Despite being sent notification of all hearings relative to this fee dispute, Attorney Cane did not appear for any proceedings.

court reporter made additional telephone calls to the appellant indicating that the request for postponement of the formal hearing had not been granted and the Commission was still waiting for written confirmation of the scheduling conflict. The appellant did not respond to the Commission's request for confirmation.

Shortly before the March 22, 2016 trial commenced, the trial commissioner was provided with a copy of an e-mail from the Connecticut Judicial website indicating that the appellant had filed an appeal with the Connecticut Appellate Court on Friday, March 18, 2016. It was the trial commissioner's understanding that the appeal was from the portion of the Compensation Review Board's Opinion affirming the trier's jurisdiction over the attorneys' fee dispute, given that the issue of apportionment was the subject of the remand. The appeal was filed more than twenty days from February 24, 2016, the date of issue of the Compensation Review Board Opinion. In her March 30, 2016 Ruling, the trial commissioner indicated that there was no justification to postpone the formal hearing because Connecticut Practice Book 61-11(b) does not provide for an automatic stay of appeal from administrative decisions.[5]

At the formal hearing of March 22, 2016, Attorneys Judith Rosenberg and Adam Blank appeared to present evidence in support of their claim for attorneys' fees arising from the settlement of the underlying workers' compensation claim in the present matter.

[5] Connecticut Practice Book § 61-11(b) (Rev. to 2015) states: "Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection. Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12. For purposes of this rule, 'administrative appeal' means an appeal taken from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals taken pursuant to the Uniform Administrative Procedure Act, 'administrative appeal' includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals."

The appellant did not appear; nor did he provide evidence of the purported scheduling conflict, despite having had four and one-half business days to do so since the March 16, 2016 letter and despite multiple attempts by workers' compensation staff members to contact him. Attorney Rosenberg took the stand and was examined by Attorney Blank on the breadth of the professional services rendered to the claimant during the period of her representation from March 18, 1999 to April 21, 2005. A more detailed description of the services provided, correspondence and statement of time and charges for said services was entered into evidence as Respondents' Exhibit 1. Also included in the exhibit was a copy of the claimant's fee agreement with Attorney Rosenberg and her law firm.

The trial commissioner concluded that Attorney Rosenberg, on behalf of Wofsey, Rosen, Kweskin & Kuriansky, LLP, had presented more than adequate justification for the law firm's receipt of one-half of the attorneys' fees from the settlement proceeds being held in escrow by the appellant. The trial commissioner also found that because the appellant had waited until four days before the March 22, 2016 formal hearing to request a postponement, and subsequently failed to provide written substantiation of the scheduling conflict, "there was no other conclusion to draw other than Attorney Vaccaro had no legitimate conflict precluding him from attending the March 22, 2016 formal proceedings." Conclusion, ¶ A. As such, the trial commissioner determined that there had been "no justification to postpone the formal proceedings on remand before the Commission." Id. The trier found that the appellant, in light of his failure to attend the March 22, 2016 formal hearing, had presented no evidence that would warrant being awarded a greater percentage of the escrowed attorneys' fees than the fifty-percent share

awarded in the February 19, 2015 Finding and Award. The trial commissioner therefore again awarded fifty percent of the escrowed attorneys' fees, or Eighty-Five Thousand Dollars ($85,000.00), to the appellee and fifty percent of the escrowed attorneys' fees, or Eighty-Five Thousand Dollars ($85,000.00), to the appellant.

On April 19, 2016, the appellant filed a timely Petition for Review, and on April 30, 2016, the appellant requested an extension of time until June 16, 2016 for filing his Reasons for Appeal, which was granted on May 3, 2016. No Reasons for Appeal were ever filed; nor did the appellant ever file his brief. On October 20, 2016, the appellant filed a Motion for Stay, requesting that this board:

> enter a stay of all proceedings in this matter pending a final decision on [the appellant's] appeal presently pending in the Appellate Court on the issue of whether the workers' compensation commission, a tribunal of limited statutory authority, has subject matter jurisdiction to adjudicate the division of an attorney's fee already approved by a commissioner between prior counsel for the Claimant and [the appellant]….

October 20, 2016 Motion for Stay, p. 1.

In his motion, the appellant argued that a stay of proceedings would "conserve the resources of the parties as well as of the commission, as a decision by the Appellate Court in favor of the Appellant would make all proceedings by the Commission on this case null and void." Id. The appellant also contended that if this were an attorney fee dispute determination arising out of Superior Court, it would have been automatically stayed but for the public policy considerations established for the protection of claimants as set forth in the provisions of § 31-301(f) C.G.S.[6] In the present matter, the appellant

[6] Section 31-301(f) C.G.S. (Rev. to 2015) states: "During the pendency of any appeal of an award made pursuant to this chapter, the claimant shall receive all compensation and medical treatment payable under the terms of the award to the extent the compensation and medical treatment are not being paid by any

contends, the "public policy consideration is obviously not present here where neither party to the appeal is a 'claimant' and nor is there an 'award under the Workers' Compensation Act' which is the subject of the appeal." Id., 2. The appellant also asserted that granting his motion would not result in prejudice to any party because "the disputed funds are being held in escrow by agreement of the parties in a financial institution." Id. The appellant's motion was granted on October 21, 2016.

On October 26, 2016, the appellee filed a Motion for Reconsideration of Order to Stay and Objection to Motion for Stay, arguing that the appellant's Motion for Stay should be reconsidered because the appellee:

> did not receive notice of the motion until after it was decided by the Board; the basis for [the appellant's] appeal to the Appellate Court is frivolous and not dispositive of the issue currently pending before the Board; it is in the interest of judicial economy for the Board to rule on the proper allocation of fees now so that any appeal by [the appellant] of the order can be consolidated with his current appeal to the Appellate Court; and [the appellee] is prejudiced by a stay….

Appellee's Motion for Reconsideration of Order to Stay and Objection to Motion for Stay, p. 1.

The appellee contends that although the appellant certified that opposing counsel was mailed a copy of his Motion to Stay, the appellee did not become aware that the motion had been filed until it received a fax from the Commission indicating that the motion had been granted. As such, the appellee was not given an opportunity to be heard on the motion or to file an objection. The appellee further contends that it "has genuine concerns about the fate of the money held in escrow," id., 5, and Connecticut Practice

---

health insurer or by any insurer or employer who has been ordered, pursuant to the provisions of subsection (a) of this section, to pay a portion of the award. The compensation and medical treatment shall be paid by the employer or its insurer."

Book § 61-12 allows for the granting of a stay to be conditional on the posting of suitable security.[7] The appellee also argues that the appellant's pending appeal to the Appellate Court is frivolous because the issue at bar has already been decided by the Connecticut Supreme Court in Ferraro v. Ridgefield European Motors, Inc., 313 Conn. 735 (2014). The appellee states that the Ferraro decision "eliminates any dispute as to the scope of the legislature's statutory grant of post-settlement authority to the Commission," Appellee's Motion for Reconsideration of Order to Stay and Objection to Motion for Stay, p. 6, and "the Supreme Court specifically rejected Attorney Vaccaro's central claim that settlement deprives the court of subject matter jurisdiction…." Id.

In addition, the appellee maintains that a stay of proceedings would not be in the interests of judicial economy because the appellant will likely appeal the board's decision relative to the apportionment of the attorney's fee. As such, "it is within judicial economy for the Board to rule on the pending issue of allocation of fees now so that Attorney Vaccaro can appeal the decision to the Appellate Court and both appeals can be consolidated." Id., 7. Finally, the appellee objects to the appellant's assertion that the stay would not be prejudicial to the parties because the disputed funds are being held in

[7] Connecticut Practice Book § 61-12 (Rev. to 2015) states, in pertinent part: "In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the superior court pending appeal shall be made to the judge who tried the case unless that judge is unavailable, in which case the motion may be made to any judge of the superior court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditional on the posting of suitable security. In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to take an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11…."

escrow. Rather, the appellee argues that once the stay is lifted, it will seek to transfer the money to a joint account which requires joint signatures for any withdrawals because the appellee "has genuine concerns regarding what may happen to the money during the pendency of any appeal." Id., 8.

On November 14, 2016, the appellant filed an Objection to Motion for Reconsideration of Order to Stay and Reply to Objection to Motion for Stay. The appellant pointed out that although Connecticut Practice Book § 66-8 provides for the dismissal of a frivolous appeal, the appellee did not file such a motion "because there was no good faith basis for doing so and [it] would be subjected to the imposition of sanctions by the Appellate Court pursuant to Practice Book Section 85-2 et seq."[8] Appellant's Objection to Motion for Reconsideration of Order to Stay and Reply to Objection to Motion for Stay, pp. 1-2. The appellant also contends that the appellee's reliance upon Ferraro, supra, is misplaced, given that in Ferraro, the court:

> only held that where the commission had jurisdiction pursuant to the explicit provisions of General Statute Section 31-299 to apportion claims, make findings and award interest, the fact that the parties reached an agreement on some or all of these issues did not deprive it of the authority over them expressly provided by statute.

Appellant's Objection to Motion for Reconsideration of Order to Stay and Reply to Objection to Motion for Stay, p. 2.

By contrast, in the present matter, the Commission has never been "given jurisdiction pursuant to any explicit statutory language to adjudicate any dispute between

[8] Connecticut Practice Book § 66-8 (Rev. to 2015) states: "Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Sections 66-2 and 66-3 within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided that a motion based on lack of jurisdiction may be filed at any time. The court may on its own motion order that an appeal be dismissed for lack of jurisdiction."

attorneys as to the division of fees," id., and the issue at bar is therefore one of first impression.

The appellant also challenges the appellee's assertions relative to its concern over the "fate," id., of the escrowed funds, arguing that the funds have been held in escrow since the date they were received and the appellee "***explicitly agreed*** to their transfer to a separate escrow account in June 2016."[9] (Emphasis in the original.) Id., 2-3. Finally, the appellant disagrees with the appellee's contention that a stay of proceedings is not in the interest of judicial economy because the appellant is likely to also appeal any decision made by this board relative to apportionment of the attorney's fee. The appellant states that "[t]his contention arrogantly presumes that this Board will uphold the obviously illegal and reversal [sic] errors of the trial commissioner…." Id., 5. Rather, "judicial economy can only be advanced by the Board entering and maintaining a stay of all proceedings in this matter pending a final decision on the appeal presently pending in the Appellate Court…." Id.

Having reviewed the foregoing, it is quite clear that the appeal in this claim currently pending before our Appellate Court concerns a challenge to the subject matter jurisdiction of the Commission to adjudicate a fee dispute between counsel of record. It is axiomatic that a challenge to the Commission's subject matter jurisdiction must be addressed before the underlying merits of a claim can be assessed. "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it." Burton v. Dominion Nuclear Connecticut, Inc., 300 Conn. 542, 550 (2011). Moreover, the Commission is a creature of statute, and "[i]t is a

[9] Both parties in this dispute accuse each other of various and sundry violations of the Rules of Professional Conduct, which accusations only serve to shed more heat than light on the issue presently before us.

familiar principal that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." Castro v. Viera, 207 Conn. 420, 427-428 (1988), *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). Thus, "once the question of lack of jurisdiction of a court is raised, '[it] must be disposed of no matter in what form it is presented;' and the court must 'fully resolve it before proceeding further with the case.' Subject matter jurisdiction, unlike jurisdiction of the person, cannot be created through consent or waiver." (Internal citations omitted.) Castro, supra, at 429-430.

In light of these well-settled precepts relative to subject matter jurisdiction, we conclude that we must affirm our Order granting the appellant's Motion to Stay.[10] We believe the interests of all parties concerned will be better served by waiting for a determination from the higher courts on this point before proceeding with litigation over the other elements of the dispute.[11]

The October 21, 2016 Order of the Compensation Review Board granting the appellant's Motion to Stay is hereby affirmed.

Commissioners Nancy E. Salerno and Christine L. Engel concur in this Ruling.

---

[10] In light of our decision, on the basis of the well-settled law of subject matter jurisdiction, to affirm our decision granting the appellant's Motion to Stay, we decline to enter into a discussion regarding the alleged judicial economies attendant on either granting or denying the motion. It can safely be asserted that the interests of judicial economy cannot thwart the necessity of addressing a threshold issue such as subject matter jurisdiction. We also decline to discuss the applicability of Ferraro v. Ridgefield European Motors, Inc., 313 Conn. 735 (2014) given that the issue of the board's subject matter jurisdiction is currently pending before our Appellate Court.

[11] Frankly, we believe that the interest of the parties would be best served if they were able to resolve this dispute between themselves.