

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

GREENVILLE FEDERAL FINANCIAL
CORPORATION D/B/A GREENVILLE FEDERAL

and

TAMARA "TAMMY" SACKETT, AN INDIVIDUAL

Cases 9-CA-075284
9-CA-081417
9-CA-086178

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT**

1. Upon charges (copies with proofs of service are attached to the Motion for Default Judgment as Exhibits A through D) filed by Tamara "Tammy" Sackett, the Charging Party, herein called Sackett, alleging that Greenville Federal Financial Corporation d/b/a Greenville Federal, herein called Respondent, has been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. § 151, et seq., herein called the Act, the Regional Director of Region 9 of the Board approved an informal Settlement Agreement and Notice to Employees (Settlement Agreement) on October 25, 2013. (A copy of this Settlement Agreement is attached to the Motion for Default Judgment as Exhibit E.)

2. The Settlement Agreement, which settled the allegations set forth in the Second Order Consolidating Cases and Consolidated Complaint issued on September 26, 2012, and attached to the Motion for Default Judgment as Exhibit G, provides, in relevant part, that:

(a) [Respondent] will revise Tammy Sackett's 2012 Annual Appraisal and remove from it and its Action Plan any negative comments about Sackett's protected concerted activities, as well as language directing Sackett to "[r]efrain from unwelcome conversations or actions that would make others uncomfortable, especially regarding sensitive matters.

(b) [Respondent] will re-evaluate Tammy Sackett for a merit raise based on her revised 2012 Annual Appraisal, and [Respondent] will pay Sackett any

wages or other benefits she lost because her 2012 Annual Appraisal contained negative comments based on her protected concerted activities.

(c) [Respondent] will not comment on [employees'] protected concerted activities in [their] Teammate Annual Appraisal, and [Respondent] will not put negative comments regarding [employees'] protected activities in [their] Teammate Annual Appraisal.

(d) [Respondent] will not issue Action Plans restricting [employees] from engaging in protected concerted activities.

(e) ... Any raise determination done pursuant to this Settlement Agreement will be reviewed at the Compliance stage after [Respondent] has made a non-discriminatory evaluation of Tammy Sackett.

3. The Settlement Agreement also contains a provision entitled "Performance," requiring immediate compliance with the Settlement Agreement's terms, and the following provision addressing the event of Respondent's [Charged Party's] non-compliance with the terms of the Settlement Agreement:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

4. On November 1, 2012, Respondent issued Sackett a revised evaluation. (A copy of Respondent's revised evaluation is attached here as Exhibit A.) Although some of the negative comments about Sackett's protected activities had been deleted, other negative references to Sackett's protected concerted activities remained in the appraisal. The remaining negative references to Sackett's protected concerted activities are as follows:

(a) Sensitivity: ... Needs Improvement. ... Tammy has had a difficult time with confidentiality and not involving others in sensitive matters.

(b) Attitude Toward Fellow Employees: ... As previously stated, however, Tammy has at times conducted herself with other employees in a way that has made some feel uncomfortable.

(c) Action Plan: ... Sensitivity: If someone else starts the conversation first, politely decline to participate and focus on the task at hand.

5. Based on the inadequately revised appraisal in Exhibit A, Respondent determined that no merit raise was warranted for Sackett.

6. On July 16, 2013, the Region's compliance officer, by e-mail, notified Respondent's counsel that Respondent's re-evaluation was not consistent with the terms of the Settlement Agreement. The compliance officer informed Respondent's counsel that to be in compliance with the Settlement Agreement, the comments listed in paragraph 4 above needed to be removed. The e-mail further notified Respondent's counsel that Respondent's conclusion that Sackett is not due a raise does not remedy the specific allegation set forth in the second consolidated complaint that Sackett was *denied* a raise because of her protected concerted activities. The e-mail informed Respondent's counsel that because Respondent failed to determine an amount for the raise due to Sackett, the Regional Director has determined that the amount is to be based upon an average of raises given to other employees. The e-mail also informed Respondent's counsel that if Respondent fails to comply with the Settlement Agreement, the Regional Director

will, in accordance with the performance clause of the Settlement Agreement, issue written notification of Respondent's alleged non-compliance and reissue the complaint. (A copy of the e-mail is attached here as Exhibit B, attachment omitted.)

7. On July 23, 2013, the Regional Director for Region 9, by letter, notified Respondent's counsel that Respondent: (i) by failing to remove negative comments about Sackett's protected concerted activity from her appraisal and action plan, and (ii) by failing to remedy the allegation set forth in the second consolidated complaint that Sackett was denied a raise because of her protected concerted activities, was in non-compliance with the Settlement Agreement described in paragraphs 2 and 3 above. Pursuant to the Settlement Agreement described in paragraphs 2 and 3 above, Respondent had 14 days to cure its non-compliance. (A copy of the letter is attached hereto as Exhibit C.)

8. To date, Respondent has not taken any action to cure its non-compliance. To the contrary, on July 31, 2013, by e-mail, Respondent's counsel notified the Region that it did not consider itself to be in non-compliance and declined to take further action.

9. After Respondent failed to cure its non-compliance with the provisions of the Settlement Agreement, pursuant to the Performance Provision of the Settlement Agreement referred to in paragraph 3 above, on August 22, 2013, the Acting General Counsel, by the Regional Director for Region 9, issued a Reissued Order Consolidating Cases and Consolidated Complaint based upon the allegations set forth in the charges referred to above in paragraph 1, and the scope of the Agreement and the performance sections of the Settlement Agreement.

10. As referenced in paragraph 3 above, the Settlement Agreement provides that in the event of non-compliance, Respondent will not contest the validity of the allegations made in the reissued consolidated complaint, referenced above in paragraph 9. The Settlement Agreement

unequivocally sets forth that the only issue Respondent may raise before the Board is whether Respondent has defaulted on the terms of the Settlement Agreement. The Board has explicitly approved of such a provision and found it enforceable. *Insulation Maintenance & Contracting, LLC*, 357 NLRB No. 50 (2011); *Chicago Parking Company*, 356 NLRB No. 72 (2011).

11. As referenced in paragraph 3 above, the Settlement Agreement provides that in the event of non-compliance, the Board without necessity of trial or any other proceeding, may issue an order providing a full remedy for the violations found as is appropriate to remedy such violations and that a U.S. Court of Appeals judgment may be entered enforcing the Board order.

Wherefore, Counsel for the Acting General Counsel moves that all of the allegations of the reissued consolidated complaint referenced above in paragraph 9, be deemed admitted to be true and so found by the Board and prays all relief that is just and proper to remedy the unfair labor practices found.

Dated at Cincinnati, Ohio this 23rd day of August 2013.

Respectfully submitted,

/s/ Zuzana Murarova

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Attachments