

No. 19-1426

In the
SUPREME COURT OF UNITED STATES

Paul Pecina Jr.

Petitioner,

vs.

Robert A. McDonald, Secretary,
United States Department of Veterans Affairs

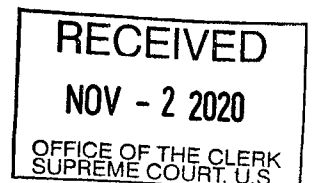
Respondent

On Petition for a Writ of Certiorari to the
United State Court of Appeals
for the Third Circuit

PETITION FOR REHEARING

Paul Pecina Jr.
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October 22, 2020



RULE 44. REHEARING

This petition for rehearing complies with rule 44 and filed withing 25 days of the supreme court of the united states order of October 5, 2020 to deny writ of certiorari.

This petition format complies to the same order as to writ for certiorari complied to of April 15, 2020, which allows a single paper copy on 8 1/2 x 11-inch paper to be submitted.

REASON FOR REHEARING

Petitioner respectfully submits this petition for rehearing on the grounds that the matter of specific law 29 U.S.C. 622 (f)(1)(g) pertaining to settlements was overlooked and not enforced by the lower courts.

PETITION FOR REHEARING

The first question presented was, did the Third Circuit Court of Appeals and the lower Western District Court of Pennsylvania depart from the accepted and usual course of judicial proceeding? The answer to the question is “yes” because of the matter of law pertaining to settlements was not applied and enforced. If the prescribed stipulations of 29 U.S.C. 622 (f)(1)(g) were properly enforced, the fraudulently begotten settlement and fraudulently begotten judgement would be deemed as void; petitioner’s claim of unlawful disability employment hiring discrimination shall have the right to proceed to trial to seek available remedy in accordance to the federal rehabilitation act.

The second part of question of one, does the matter call on the supervisory powers of the United States Supreme Court to be exercised? The answer is “yes”.

Respondent has not and cannot present any legitimate arguments in dispute to the matter that the settlement was procured by fraud, and to the matter that the stipulation of dismissal was fraudulently entered during the 7-day revocation period, and to the matter that the judgement was fraudulently begotten during the 7-day revocation period. The record clearly contains clear and convincing evidence of fraudulent proceedings.

In accordance to statutory law, 29 U.S.C. 622 (f)(1)(g), a settlement is not voluntary, effective or enforceable during the revocation period of a settlement.

The third circuit court’s decision to affirm the lower district court’s decision to deny petitioner relief from a settlement procured by fraud and enforced by fraudulent proceedings was founded on a misapprehension of facts from petitioner’s informal brief. The third circuit court misconstrued petitioner’s statements on subject matter of fraud. The third circuit court’s holding is that because petitioner “knew of the fraud” at the time of settlement and before entry of stipulation of dismissal, petitioner “could not” have obtain relief. The third circuit court’s holding

of the stand-alone issue that petitioner “knew of the fraud” is so critically and plainly wrong. The holding that petitioner “knew of the fraud”, does not exist in this very case of settlement injustice.

In a settlement that contains a clause for a specified 7-day revocation period, accordingly to plain law, there could be no such holding that petitioner “knew of the fraud at the time of” settlement, and before entry of stipulation of dismissal if the “time of” settlement and “before” entry of stipulation of dismissal WAS during the 7-day revocation period.

29 U.S.C 622 (f)(1)(g) clearly and specifically states that a settlement is not voluntary, effective or enforceable during the revocation period. When stipulation of dismissal was entered during the 7-day revocation the settlement was in breach of contract therefore, the settlement became null and the judgement to dismiss case was deemed void, especially and specifically because the judgement was entered during the 7-day revocation period.

29 U.S.C. 622 (f)(1)(g) was placed in the United States Code of law to prevent plaintiffs from being bullied and forced into a settlement against their will and to allow a specified amount of time for a plaintiff to fully know and voluntarily accept a settlement. It is illegal to coerce a person to sign a settlement by fraud; and it is illegal for the court to force a person into a settlement with fraudulent proceedings.

May 27, 2016 was the time of mediation

May 31, 2016 was the time of settlement

June 2, 2016 was the time of entry of stipulation of dismissal.

June 3, 2016 was the time of judgement to dismiss case with prejudice.

June 6, 2016 was the time of backdated and fraudulent document [35] was filed by district court. Document [35] was an entry of a status conference hearing before the district court judge that never occurred.

Before petitioner signed settlement papers, petitioner was speculating in an email to his counsel that he was induced into settlement by fraud and ultimately, petitioner specifically and clearly stated that he did not want to accept settlement as it stands. When officers of the court and the district court itself became aware petitioner was speculating that he was induced into settlement by fraud, officers of the court and the district court itself immediately in violation and during the 7-day revocation period responded by perpetrating fraudulent proceedings to dismiss case with prejudice to close the door on the settlement and cover up misconduct of inducing petitioner into settlement by fraud. Petitioner did not fully “know” of the fraud until after the judgement was fraudulently begotten.

The third circuit court “recognized” in petitioner’s informal brief that fraud did occur during mediation.

Pertinent evidence that was withheld from petitioner at the time of mediation was disclosed on June 22, 2016, after judgement to dismiss case with prejudice was ordered on June 3, 2016. The withheld evidence revealed that the mediation of May 27, 2016, was procured by fraud. It was on June 22, 2016, when petitioner “knew of the fraud” and the speculation of fraudulent inducement became fully known. The evidence that was withheld was respondent’s answer to the plaintiff’s first set of interrogatories. The interrogatories contained documents of respondent’s hiring practice. The documents reveal and clearly show that respondent’s management’s conduct was pretextual and clearly shows that respondent cannot claim a defense of mixed-motive. If petitioner would have had privilege to view the interrogatories before mediation, officers of the court and the district court would not have been able to manipulate the mixed-motive strategy and fool petitioner into accepting a settlement without a job offer.

The fraud that induced the settlement during mediation was created by the law clerk who improperly conducted the mediation in non-compliance to the local district court’s ADR policy and procedures. Law clerks serving judges are not on the local ADR panel of approved mediators to conduct mediations. During the mediation

when negotiations were heading into an impasse over petitioner's demand for a job offer as part of a settlement, despite that at the time of mediation, respondent had posted a vacancy announcement of a new vacant permanent plumber position. As part of settlement respondent could have offered petitioner the newly posted permanent plumber with compensation for damages instead of instating petitioner to the original position he applied to, which was subjected to unlawful disability employment discrimination. If instated, petitioner would be entitled to backpay, accrued seniority and accrued benefits. The lower district court law clerk helped respondent circumvent petitioner's demand for a job offer by telling petitioner, "in a mixed-motive case the court is barred from hiring petitioner". Petitioner's counsel committed malpractice by abusing petitioner's ignorance and did not disclose that they had evidence (*that was not disclosed to petitioner at the time of mediation*) in their possession that clearly disputes the law clerk's claim of petitioner's case being a mixed-motive case. The mixed-motive statute was not applicable. Respondent never pleaded an affirmative defense of mixed-motive in their answer to the complaint. The district court and officers of the court during mediation fraudulently made petitioner believe that he could not obtain a court ordered job offer at trial because of the fraudulent misrepresentations of the mixed-motive statute.

At the close of mediation, the settlement contract was not produced or signed by the parties, only portions of the settlement were memorialized on record. Before respondent could draft the settlement contract, petitioner sent a three-page email to his counsel titled "Not going to accept settlement as it stands". The email sent on May 31, 2016 speculated that there were fraudulent misrepresentations made during mediation. Petitioner's counsel told petitioner that even though he may be right about the misrepresentations, if petitioner does not accept and sign the settlement papers the district court is going to enforce the settlement. At the time petitioner's counsel was fraudulently coercing petitioner to accept and sign settlement papers, the settlement papers were being printed up on petitioner's counsel's printer.

Petitioner signed settlement papers on May 31, 2016. The next day on June 1, 2016, in the act of revoking acceptance and signing settlement, petitioner sent an email to his counsel and asked if the settlement can be removed from the court. Petitioner's counsel ignored petitioner's email. On June 2, 2016, petitioner's counsel colluded with respondent's counsel and filed stipulation of dismissal with prejudice in violation of the 7-day revocation period. The district court entered judgement to dismiss case with prejudice on June 3, 2016, day 3 of the 7-day revocation period.

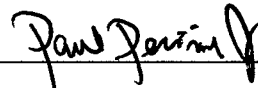
Petitioner filed a brief for rehearing with explicit facts and evidence on record showing how he "knew of the fraud" is not the proper holding. The third circuit court was dismissive of law presented in petitioner's brief for rehearing and denied rehearing despite petitioner's clear showing of fraud and clear showing of violation of 29 U.S.C 622 (f)(1)(g) which would justify granting relief. The clear and convincing facts petitioner presented in his informal brief and brief for rehearing show that petitioner "could have" obtained relief because of the lower district court's ultimate abuse of discretion. The proceedings of entry of stipulation of dismissal with prejudice and the fraudulent document [35] on the record file by the district court of a hearing that did not exist, can be construed as fraud on the court. These fraudulent proceedings that violated petitioner's settlement rights should have compelled the third circuit court to remand.

The proper holding of the third circuit court's decision should have found, because of the lower district court's ultimate abuse of discretion, petitioner should be entitled to justified relief.

Justice was not served with equity in this disability employment hiring discrimination case; it is clear and evident that it would be appropriate for this court to issue a GVR order to grant rehearing for certiorari and vacate the lower district court's judgement so the settlement can be set aside and remand petitioner's case to district court, so that petitioner can proceed on his disability employment hiring discrimination claims and seek the available remedy of the federal rehabilitation act in trial.

October 23, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Pecina Jr.", is written over a horizontal line.

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