



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:

Patrick C. Togawa,

Complainant,

v.

Imperial Pacific International (CNMI)
LLC dba Best Sunshine International Ltd.,

Respondent.

Labor Case No. 16-025

**ORDER DENYING
COMPLAINANT’S
MOTION TO DISMISS
COMPLAINT AND TO
SET ASIDE JUDGMENT**

I. INTRODUCTION

On September 25, 2019, Complainant filed a Motion to Dismiss Complaint And To Set Aside Judgment (“Complainant’s Motion”). For the reasons discussed below, Complainant’s Motion is hereby **DENIED**.

II. BACKGROUND

This matter concerns a claim for wrongful termination by Complainant Patrick C. Togawa (hereinafter, “Complainant”) against Respondent Imperial Pacific International (CNMI) LLC *dba* Best Sunshine International Ltd. (hereinafter, “Respondent”). On December 28, 2018, judgment was entered in favor of Complainant based on a finding that Respondent breached the implied covenant of good faith and fair dealing in connection with its constructive discharge of Complainant on August 23, 2016. Damages were

awarded to Complainant in the amount of \$7,800. Further, Respondent was ordered to pay the full amount of damages to Complainant no later than thirty (30) days after the date of the Administrative Order. The time to appeal the judgment had passed. After Respondent's Motion to Extend Time for Appeal and subsequent Motion for Reconsideration were denied by the Secretary of Labor, Respondent filed an administrative appeal with the CNMI Superior Court. The case was never remanded to the Administrative Hearing Office. However, on September 25, 2019, Complainant filed the present motion to dismiss the complaint and set aside the judgment against Respondent pursuant to a settlement agreement in the CNMI Superior Court.

III. LEGAL STANDARD

Generally, motions and requests are governed by NMIAC § 80-20.1-470 (e). Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e).¹ While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1).

¹ When exercising jurisdiction over appeals, the Secretary shall have all the powers and responsibilities of a hearing officer. 3 CMC § 4528(g); *see also* NMIAC § 80-20.1-490(d).

IV. DISCUSSION

Complainant's Motion is hereby denied for the following reasons:

1. The Judgment was rendered final after the time to appeal passed.

The deadline to appeal is established by statute and mirrored in the Department's regulations. *Compare* 3 CMC § 4948 and NMIAC § 80-20.1-620(b). The statute provides,

[w]ithin fifteen days of issuance, any person or party affected by findings decisions, or orders made pursuant to 3 CMC § 4947 of this chapter may appeal to the Secretary by filing a written notice of appeal, in a form prescribed by regulations, stating the ground for the appeal. *If no appeal is made to the Secretary within fifteen days, the findings, decisions, or orders shall be unreviewable administratively or judicially.*

3 CMC § 4948(a) (emphasis added).²

While Respondent filed a Motion to Extend Time for Appeal and a subsequent Motion for Reconsideration with the Department of Labor's Office of the Secretary, Respondent did not file a notice to appeal, appeal brief, or filing fee for an appeal with the Department of Labor. The deadline to appeal has long passed. Accordingly, the judgment was rendered final and "unreviewable administratively or judicially." 3 CMC § 4948. If the matter is unreviewable, it is procedurally illogical to, after the fact, dismiss the complaint and set aside judgment pursuant to a settlement agreement.³

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² The time limit for filing an intra-agency appeal is mandatory and jurisdictional. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court lacks jurisdiction to review administrative decisions not timely appealed during the administrative process. *Rivera v. Guerrero*, 4 NMI 79 (1993). A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process. *Pac. Saipan Technical Contractors v. Rahman*, 2000 MP 14 ¶ 14.

³ Furthermore, given the judgment was final and unreviewable, Complainant was already entitled to \$7,800. Accordingly, any settlement agreement for less poses questions as to whether sufficient consideration supports a subsequent settlement agreement.

