

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: RIAN C. SEEMAN

FAA Order No. 2014-3

FDMS No. FAA-2012-0198¹

Served: October 29, 2014

**ORDER DEEMING MOTION FOR LEAVE TO WITHDRAW COMPLAINT
AS A NOTICE OF APPEAL AND APPEAL BRIEF,
GRANTING THE REQUEST TO WITHDRAW THE COMPLAINT,
VACATING THE ALJ'S ORDER ASSESSING CIVIL PENALTY
AND DISMISSING THE PROCEEDINGS WITH PREJUDICE**²

After Administrative Law Judge (ALJ) J.E. Sullivan issued an order entering a default judgment and assessing a \$4,200 civil penalty against Rian Seeman (Respondent), Complainant filed its Motion for Leave to Withdraw the Complaint, in which Complainant requested that the ALJ vacate that order. Complainant argued that the ALJ should vacate the order because the parties settled before the ALJ issued the order. The ALJ referred Complainant's motion to the Administrator for consideration as an appeal. As will be explained further, the Administrator construes the motion as a notice of appeal and appeal brief, grants the request to withdraw the complaint, vacates the ALJ's order, and dismisses the proceedings with prejudice.

¹ Generally, materials filed in the FAA Hearing Docket are also available for viewing at <http://www.regulations.gov>. 14 C.F.R. § 13.210(e)(1).

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/. See 14 C.F.R. § 13.210(e)(2). In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

A. Background.

On February 17, 2012, Complainant filed its complaint against Seeman, seeking a \$4,200 civil penalty for alleged violations of 14 C.F.R. § 121.317. Seeman neither filed an answer nor attended the two prehearing conferences held by the ALJ. After the second prehearing conference, the ALJ issued an order in which she directed that Complainant “may file a Motion to Deem Allegations Admitted and For Default Judgment on or before July 31, 2012.” Complainant filed its motion on July 27, 2012. On August 31, 2012, the ALJ granted Complainant’s motion and assessed a \$4,200 civil penalty against Seeman.

Five days later, Complainant sent the ALJ its Motion for Leave to Withdraw the Complaint, in which Complainant requested that the ALJ vacate the order assessing civil penalty. Complainant explained that the parties had settled this matter on August 3, 2012. The ALJ referred Complainant’s Motion for Leave to Withdraw the Complaint to the Administrator for consideration as a notice of appeal.

B. The Appeal.

The Administrator has held that once the ALJ issues an initial decision or order assessing civil penalty, the ALJ loses jurisdiction over the matter and does not have the authority to reconsider the initial decision, to dismiss the complaint without prejudice, *Keller*, FAA Order No. 2011-2 (January 11, 2011), or to vacate the initial decision, *Degenhardt*, FAA Order No. 1990-16 at 6 (August 16, 1990).³ In past cases, the Administrator has construed motions to reconsider or to vacate that were filed with the ALJ as notices of appeal. *E.g.*, *Keller*, FAA Order No. 2011-2 at 6-7. In this case, the Administrator construes Complainant’s motion for

³ The precedent set in this line of cases is based upon Section 13.232(d) of the Rules of Practice in Civil Penalty Proceedings. Section 13.232(d) provides that “[u]nless appealed pursuant to § 13.233 of this subpart, the initial decision issued by the administrative law judge shall be considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, ... is warranted.” 14 C.F.R. § 13.232(d).

leave to withdraw the complaint and requesting that the ALJ vacate the ALJ's order as a notice of appeal.⁴ Further, Complainant's motion to vacate is sufficiently detailed to be construed as an appeal brief. *Keller*, FAA Order No. 2011-2 at 7 (“[t]he Administrator has construed notices of appeal as appeal briefs ... when the notice of appeal contained sufficient detail to explain the basis of the ... appeal.”)⁵

C. Withdrawal of the Complaint.

Section 13.215 provides that the agency attorney may withdraw its complaint at any time before or during the hearing without the consent of the ALJ. 14 C.F.R. § 13.215. In this case, the ALJ did not hold a hearing. If the parties had withdrawn the request for hearing and the complaint at the time they settled, the ALJ would have been required under Section 13.215 to dismiss the proceedings with prejudice rather than issue a default judgment.

Although the Rules of Practice do not provide specifically for withdrawals of the request for hearing or the complaint after the issuance of an initial decision or order assessing civil penalty, the Administrator in the past has accepted withdrawals of the complaint while an appeal from an initial decision or order assessing civil penalty was pending.⁶ Accordingly, Complainant's request in this case to withdraw its complaint is granted.

⁴ Complainant filed the motion 5 days after the ALJ issued the order, within the timeframe for filing a notice of appeal. *See* 14 C.F.R. § 13.233(a) (requiring that a party file a notice of appeal within 10 days after the issuance of an initial decision) and 14 C.F.R. § 13.211(e) (the “mailing rule”) providing an additional 5 days if, as in this case, the ALJ's order was served by mail.)

⁵ The Rules of Practice in Civil Penalty Proceedings require a party to perfect its appeal by filing an appeal brief not later than 50 days after service of the ALJ's written initial decision on the party. 14 C.F.R. § 13.233(c).

⁶ *See e.g., Wine Country Helicopters, Inc.*, FAA Order No. 2008-13 (December 19, 2008) (in which after the respondent filed a motion that was construed as a notice of appeal and appeal brief from a written initial decision, the agency attorney withdrew the complaint; the Administrator dismissed the appeal as moot and dismissed the proceedings with prejudice); *Lewis*, FAA Order No. 2005-11 (April 27, 2005) (in which the Administrator dismissed the respondent's appeal from an order assessing civil penalty as moot and the proceedings with prejudice after the parties settled and the agency attorney

In light of the withdrawal of the complaint, the order assessing civil penalty lacks the force and effect of law. *Wine Country*, FAA Order No. 2008-13 (December 19, 2008); *SONICO*, FAA Order No. 2000-24 (December 21, 2000).

D. The Request to Vacate the Order Assessing Civil Penalty.

The remaining question is whether the ALJ's order assessing civil penalty should be vacated as requested by Complainant. The leading case on vacatur is *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). Under *Munsingwear*, when a case on appeal becomes moot, the "established practice ... is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id.*, at 39. There are exceptions to this rule. For example, in *U.S. Bancorp Mortg. Co., v. Bonner Mall P'ship*, 513 U.S. 18 (1994), the Supreme Court held that absent exceptional circumstances, vacatur was inappropriate because the parties had settled while the appeal was pending. The Court explained that when parties settle a case while an appeal on the merits is pending, the matter has not become moot due to circumstances unattributable to the parties but instead:

the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur. The judgment is not unreviewable, but simply unreviewed by his own choice.

Id., at 25.

In *SONICO*, the Administrator denied a request to vacate an initial decision when the parties settled the case while the appeal was pending. In that case, the ALJ had held a hearing and issued a written initial decision, from which both parties appealed. Prior to the due date of the parties' reply briefs, the parties settled, the respondent withdrew the request for hearing and

withdrew the complaint instead of filing a reply brief); *Sutton*, FAA Order No. 95-6 (April 26, 1995) (dismissing the Respondent's appeal and dismissing the complaint with prejudice after the parties filed a document entitled "Joint Notice of Settlement" advising that the case had been settled and that the respondent's appeal and the agency's complaint had been withdrawn).

its appeal from the initial decision, and the complainant withdrew its complaint, amended final notice of proposed civil penalty and appeal. The parties requested that the Administrator vacate the initial decision.⁷ Relying upon *U.S. Bancorp*, the Administrator denied the request to vacate the initial decision.⁸

The instant case differs from *U.S. Bancorp* and *SONICO* because the parties settled the case *before* the ALJ issued the default judgment. Hence, as explained in a case in which the court vacated a judgment entered after a settlement, *Tembec, Inc. v. United States*:

Thus, this is not a situation where a losing party has abandoned its right to review by entering into a postjudgment settlement.... Here, a party has not rendered its case unreviewable by its “own choice” upon surrendering its right to have an adverse judgment overturned. [citations omitted.] *Rather, this is a case where the terms of the Agreement were agreed to before the judgment was entered, and more importantly, before the parties knew which would prevail.*

Tembec, Inc., v. U.S., 475 F. Supp. 2d 1393, 1402 (Ct. Int’l Trade 2007) (emphasis added).

Nonetheless, in *Tembec*, the court vacated only the judgment that it entered about one month after the parties reached their agreement, but not the decision itself. The court explained that it was appropriate to vacate the judgment because “no case or controversy remains as the result of prejudgment and postjudgment⁹ events.” *Tembec*, 475 F. Supp. 2d at 1401. However,

⁷ The Administrator wrote that it was not clear whether the Rules of Practice gave him the authority to vacate an order of the ALJ. Section 13.233(j) explicitly gives the Administrator the authority to reverse an initial decision. 14 C.F.R. § 13.233(j). There is no practical difference between reversing and vacating a default judgment assessing a civil penalty.

⁸ But see *Sutton*, FAA Order No. 95-6 (April 26, 1995), in which the Administrator vacated the order assessing civil penalty issued by the ALJ without considering the circumstances in which vacatur would be appropriate. In that case, the respondent filed a timely notice of appeal from an ALJ’s order assessing a \$1,000 civil penalty due to the respondent’s failure to file an answer. While the appeal was pending, the parties advised the Administrator that (1) they had settled the case, (2) Respondent was withdrawing his appeal and (3) Complainant was withdrawing the complaint. The Administrator dismissed Respondent’s appeal, vacated the order assessing civil penalty, and dismissed the proceedings with prejudice.

⁹ The court held that at the time the judgment was entered, the case was not moot because part of the agreement was not put into effect until after the judgment was entered. The controversy was still live

because the case was not moot at the time of the entry of the judgment, the court did not withdraw its decision. The court distinguished the decision, consisting of the findings of fact and conclusions of law, from the judgment, in which the court pronounces the decision and the act that gives it legal effect. The court wrote, “Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur.” *Tembec*, 475 F. Supp. 2d at 1402-1403, *quoting U.S. Bancorp*, at 513 U.S. at 26.

In this case, the parties settled the matter before the ALJ ruled on Complainant’s Motion to Deem Allegations Admitted and for Default Judgment. Thus, neither party abandoned any right to review an unfavorable decision by the ALJ. The settlement ended the dispute between the parties, and had the ALJ been notified of the settlement in a timely fashion, she would not have issued the order assessing civil penalty. Further, the ALJ did not issue a separate decision and judgment in this matter. The ALJ’s order is of limited value in terms of public guidance because she found Respondent in default. Hence, the ALJ’s Order Granting Motion to Deem Allegations Admitted, Granting Default Judgment, and Assessing Civil Penalty is vacated in its entirety.

Accordingly, the request to withdraw the complaint is granted, the Order Granting Motion to Deem Allegations Admitted, Granting Default Judgment, and Assessing Civil Penalty is vacated in its entirety, and the proceedings are dismissed with prejudice.

[Original signed by the Administrator]

MICHAEL P. HUERTA, ADMINISTRATOR
Federal Aviation Administration

until the Court of International Trade (CIT) modified injunctions against liquidation and the Bureau of Customs and Border Protection relayed additional liquidation instructions.

