

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA S. MOWRER, : CIVIL ACTION
 : NO. 98-2908
Plaintiff, :
 :
v. :
 :
WARNER-LAMBERT COMPANY, :
 :
Defendant. :

FINDINGS OF FACT, APPLICABLE
LEGAL PRINCIPLES, AND CONCLUSIONS OF LAW

EDUARDO C. ROBRENO, J.

JULY 13, 2000

Currently before the court are defendant Warner-Lambert Company's ("Warner-Lambert") motion to enforce an alleged settlement agreement, plaintiff Lisa S. Mowrer's ("Mowrer") related motion to strike the court's order dismissing the case after having been advised that the parties had settled the matter, and Mowrer's petition to file an amended complaint. Mowrer contends that the settlement agreement with her former employer, Warner-Lambert, is unenforceable because Mowrer's previous attorney lacked authority to settle the instant lawsuit on her behalf. Specifically, Mowrer claims that she never authorized her former attorney to settle her lawsuit unless Warner-Lambert agreed to pay her \$15,000 and award her long-term disability benefits. Warner-Lambert, on the other hand, claims that Mowrer had given her attorney express actual authority to

settle the lawsuit for \$2,000 in exchange for her general release of all claims, confidentiality, and her agreement that Warner-Lambert would have no obligation to rehire her.

The court held a two-day hearing during which the parties presented evidence of the circumstances surrounding the alleged settlement. The court now makes findings of fact, sets forth the applicable legal principles, and reaches the following conclusions of law.

I. FINDINGS OF FACT¹

1. In the fall of 1996, Mowrer, along with Connie Wright ("Wright"), Sandra White ("White"), and Joyce Shaffer ("Shaffer") (all four individuals hereinafter referred to as "plaintiffs"), retained the law firm of Lovitz and Gold, P.C. ("Lovitz and Gold") to represent them in an action against their former employer, Warner-Lambert. See Tr. 2/17/00 at 9-10; Tr. 4/3/00 at 34, 59-60.

2. The fee agreement prepared by Lovitz and Gold and signed by Mowrer states in pertinent part: "The undersigned, Lisa S. Mowrer, hereby constitutes and appoints Lovitz and Gold, Professional Corporation, as attorneys to prosecute a claim for

¹ To the extent these findings of fact include conclusions of law or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this court.

damages against Warner-Lambert arising out of my employment upon the following terms." See Tr. 2/17/00 at 32; Pl.'s Ex. 1.

3. Although Sidney Gold, Esquire ("Gold") initially interviewed the plaintiffs, Kevin Lovitz, Esquire ("Lovitz"), an associate with Lovitz and Gold, was the lawyer who handled the plaintiffs' cases both before the Pennsylvania Human Relations Commission ("PHRC") and in federal court. See Tr. 2/17/00 at 9, 26.

4. Early in 1996, prior to Mowrer's retention of Lovitz and Gold in connection with the instant matter, Warner-Lambert's insurance company had denied Mowrer's claim that she was entitled to receive long-term disability benefits. See Tr. 2/17/00 at 34; Tr. 4/3/00 at 48, 84. In connection with Mowrer's disability benefits claim, Mowrer was represented by an attorney not associated with Lovitz and Gold. See Tr. 2/7/00 at 9, 31-32; Tr. 4/3/00 at 84.

5. During the PHRC proceedings in 1997, Lovitz discussed with Mowrer her desire to pursue her claim for long-term disability benefits. See Tr. 2/17/00 at 30-31. At that time, Lovitz informed Mowrer that her long-term disability benefits claim was not part of Lovitz & Gold's representation. Id. at 31, 39. Lovitz did not discuss the topic of long-term disability benefits with Mowrer after that time and no claim for

long-term disability benefits was asserted before the PHRC.² See generally id. at 9, 30-31, 39-40; Tr. 4/3/00 at 9.

6. On June 4, 1998, after having exhausted their administrative remedies, the plaintiffs filed a joint complaint in this court claiming that Warner-Lambert violated their rights under the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. and the Pennsylvania Human Relations Act ("PHRA"), 42 Pa. Cons. Stat. Ann. § 951 et seq. See Compl. ¶ 2. The complaint did not assert a claim for improper denial of long-term disability benefits for any of the plaintiffs. Id.

7. At the initial pretrial conference, the court severed the claims of each of the plaintiffs into four separate actions, but consolidated the four cases for pretrial purposes. See Order dated February 17, 1999.

8. As the litigation progressed, Lovitz grew concerned about the weaknesses in the plaintiffs' claims. See Tr. 2/17/00 at 10. Consequently, during March or April of 1999, Lovitz began to discuss the possibility of settlement with Robert M. Goldich, Esquire ("Goldich"), Warner-Lambert's counsel. Id.; see also Affidavit of R. Goldich at ¶ 2.

² To the extent Mowrer's testimony contradicts Lovitz' testimony on this matter, see Tr. 4/3/00 at 83 ("But every time I brought up my long-term, Kevin never once told me he wasn't pursuing that, or I would have never from day one ever brought up about my long-term every frigging time."), the court finds Mowrer not credible. See infra, note 4.

9. During the early phases of the negotiations, Lovitz often communicated with the plaintiffs through Wright, who, in turn, would transmit questions or information regarding the cases to the other three plaintiffs. Lovitz eventually communicated with each of the plaintiffs individually regarding the specific terms of any settlement offer or demand.³ See Tr. 2/17/00 at 22-23, 37-38; Tr. 4/3/00 at 66.

10. The plaintiffs initially authorized Lovitz to settle their cases for payment by Warner-Lambert of amounts "between two and \$5,000" to each of the plaintiffs. See Tr. 2/17/00 at 12.

11. As a matter of negotiation strategy, Lovitz made an initial demand of \$30,000 for each of the plaintiffs. Id. at 11-12.

12. Goldich countered by offering \$3,000 for Wright, White, and Shaffer, and \$1,000 for Mowrer in return for a full and general release of all claims against Warner-Lambert, confidentiality, and no obligation to rehire the plaintiffs. See id. at 12-13; see also Def.'s Ex. Mowrer-16 (Letter from Goldich to Lovitz, dated Mar. 2, 1999); Goldich Aff. ¶ 4.

13. Lovitz then contacted Mowrer and explained that Warner-Lambert had offered to settle her claim for \$1,000 in exchange

³ Because the actual specifics of the settlement negotiations occurred during individual conversations between Mowrer and Lovitz, the court finds the testimony of Wright regarding Mowrer's settlement position unpersuasive.

for a general release, confidentiality of the terms of settlement, and Mowrer's agreement that she would not seek to be reinstated or rehired by Warner-Lambert. See Tr. 2/17/00 at 13.

14. During this conversation, Lovitz further explained to Mowrer that the general release Warner-Lambert sought in return for the monetary payment would preclude her from pursuing "any" and "all" claims arising out of her employment with Warner-Lambert if she settled. Id. at 13-14, 38-39; see also Tr. 4/3/00 at 4-5, 9.

15. Lovitz did not specifically inform Mowrer that, by agreeing to the release, she would be giving up her claim that she was entitled to receive long-term disability benefits and that she would not be able to pursue that claim against Warner-Lambert any further in any forum. See Tr. 2/17/00 at 38-39; see also Tr. 4/3/00 at 4, 9.

16. Mowrer rejected Warner-Lambert's initial \$1,000 offer and directed Lovitz to try to increase the monetary recovery. See Tr. 2/17/00 at 14-15. White, Wright, and Shaffer also rejected Warner-Lambert's initial offer. Id.

17. Lovitz then contacted Goldich and made a second demand of \$7,500 for each of the plaintiffs. Warner-Lambert countered the plaintiffs' second demand with an offer of \$4,000 for Wright, White, and Shaffer and \$1,000 for Mowrer. Id. at 15; see also Goldich Aff. ¶¶ 5-6.

18. All four plaintiffs rejected Warner-Lambert's second counter-offer. See Tr. 2/17/00 at 15.

19. Next, Lovitz, with authorization from all of the plaintiffs, made a third demand of \$5,000 for White, Wright, and Shaffer, and \$2,000 for Mowrer. Id. at 15-16; see also Goldich Aff. ¶ 7.

20. In turn, Warner-Lambert made a third counter-offer, this time with \$4,250 each for White, Wright, and Shaffer and \$1,250 for Mowrer. See Tr. 2/17/00 at 16; see also Def.'s Ex. Mowrer-17 (Letter from Goldich to Lovitz dated Apr. 16, 1999); Goldich Aff. ¶ 8.

21. Each of the plaintiffs rejected Warner-Lambert's third counter-offer. See Tr. 2/17/00 at 17.

22. Specifically, Lovitz confirmed Mowrer's rejection of Warner-Lambert's third counter-offer in writing and informed her that litigation of her claims would continue. Id. at 17-18; see also Def.'s Ex. Mowrer-14 (Letter from Lovitz to Mowrer dated Apr. 20, 1999).

23. Approximately one week later, White and Wright individually contacted Lovitz expressing their desire to settle their cases for \$4,250 each even if the other two plaintiffs did not settle. See Tr. 2/17/00 at 18-20. Lovitz contacted Goldich and advised him that Wright and White had authorized him to accept Warner-Lambert's third counter-offer if the offers were

still on the table. Id. Goldich subsequently confirmed that Warner-Lambert had agreed to pay Wright and White \$4,250 each in return for a release of all claims, confidentiality, and no reinstatement. Id. at 16-19; Def.'s Exs. Mowrer-17, 18.

24. Later that same day, after Mowrer learned about the Wright and White settlements, she called Lovitz, informed him that she would accept \$2,000 for her case, and authorized Lovitz to contact defense counsel with yet a fourth demand. See Tr. 2/17/00 at 20.

25. Lovitz called Goldich, who, after contacting Warner-Lambert, informed Lovitz that Warner-Lambert would agree to pay Mowrer \$2,000 on the same terms previously proposed. See id.

26. After hearing from Goldich, Lovitz immediately called Mowrer and advised her that Warner-Lambert was willing to accept her demand for \$2,000. Id. Lovitz also reexplained to Mowrer that the terms of the settlement included a general release, a confidentiality provision, and a provision stating that Warner-Lambert would have no obligation to reinstate or rehire Mowrer. Id.; see also Tr. 4/3/00 at 5. Lovitz further told Mowrer that once he informed Goldich that she had agreed to settle the case, "the case was over." See Tr. 4/3/00 at 5. Mowrer authorized Lovitz to accept Warner-Lambert's offer of \$2,000 on those

terms.⁴ See Tr. 2/17/00 at 20-21.

27. After discussing the settlement with Mowrer and obtaining her authorization, Lovitz called Goldich to inform him

⁴ To the extent that Mowrer claims that she neither authorized Lovitz to settle the suit for \$2,000 nor was she informed of, let alone approved, a general release of "all" claims, see Tr. 4/3/00 at 66-67, the court concludes that Mowrer's testimony at the hearing was not credible. Indeed, as outlined below, Mowrer's testimony was often contradictory and vague.

First, Mowrer claims that she expressly authorized Lovitz to settle her case against Warner-Lambert for a payment of \$15,000 and receipt of her long-term disability benefits. See Doc. # 28, Ex. A at ¶ 5; Tr. 4/3/00 at 64. However, none of the letters and counter demands transmitted between counsel and made part of the current record refer to a demand of \$15,000. Moreover, neither in the PHRC proceedings nor in the instant action did Mowrer assert a claim for long-term disability benefits.

Second, although Mowrer testified that she "told [Lovitz] not to settle anything," she also testified that when she received the draft settlement agreement in the mail, she was surprised that it was multiple pages long because "[she] was assuming just like a one-page letter" See Tr. 4/3/00 at 69. Thus, it appears that Mowrer was surprised at the length of the settlement agreement rather than the fact of the agreement.

Third, Mowrer's testimony at the hearing that she never authorized Lovitz to settle her case is also in conflict with her letters of June 8, 1999, which she wrote with the assistance of her present counsel, to Lovitz and Gold and to the court setting forth her reasons for discharging the Lovitz and Gold firm for several reasons. One, the letter to Lovitz and Gold makes no mention that Lovitz lacked authority to settle her claim. See Def.'s Ex. Mowrer-15. Two, the letter does not refer to any previous conversation Mowrer allegedly had with Hyman Lovitz, Esquire, the named partner of Lovitz and Gold and Lovitz' father, in which she allegedly told him that Lovitz lacked authority to settle her case on her behalf. Id. Three, Mowrer's letter to the court similarly does not refer to Lovitz' alleged lack of settlement authority.

Thus, given that the events in question occurred recently, events which obviously involved a matter of great importance to Mowrer, the court finds that her testimony lacked the coherence and clarity that would make it credible.

that Mowrer had accepted the settlement. Id. at 20.

28. Goldich then sent a letter to Lovitz confirming Mowrer's agreement to settle the case.⁵ Id. at 21; see also Def.'s Exhibit Mowrer-20 (Letter from Goldich to Lovitz dated April 27, 2000).

29. At all relevant times, Goldich was unaware of any facts that would put him on notice that Lovitz lacked authority to settle Mowrer's claim. See Goldich Aff. ¶ 14.

30. Lovitz never proposed to Goldich that granting Mowrer long-term disability benefits was a condition for settlement. See 4/3/00 Tr. at 24. Goldich was unaware of the fact that Mowrer was not receiving long-term disability benefits at the time of settlement. Id. at 27.

31. Shortly after agreeing to the settlement on Mowrer's behalf, Lovitz sent an internal memorandum to Gold, notifying him

⁵ The court notes that the letter dated April 27, 1999, written by Goldich states, "We have agreed in light of the fact that your client has no claim for lost wages due to her continuing receipt of disability pay that the settlement payment will be fully allocated to her claims for general compensatory damages and attorneys' fees." See Def.'s Ex. Mowrer-22. The court finds Lovitz' and Goldich's testimony as to the irrelevant nature and inadvertent inclusion of this language credible. Both counsel were concerned with the tax ramifications of any monetary settlement rather than with Mowrer's receipt or non-receipt of disability pay. See Tr. 4/3/00 at 7-8, 26-27. Moreover, this language was present in every settlement confirmation letter drafted by Goldich on that date. See Def.'s Exs. Mowrer 18-20.

of all of the plaintiffs' settlements.⁶ See Tr. 2/17/00 at 22; see also Def.'s Ex. Mowrer-22 (Mem. dated Apr. 29, 1999).

32. Gold then advised the court of the settlement. See Def.'s Ex. Mowrer-23 (Letter dated May 26, 1999). Based on Gold's representation that the parties had reached a settlement, the court dismissed the case under Local Rule of Civil Procedure 41.1(b).⁷ See Order of June 2, 1999.

33. On May 19, 1999, Hyman Lovitz mailed to Mowrer the settlement agreement and release, which Mowrer refused to sign. See Pl.'s Exs. 4-5.

34. In terms of educational background, Mowrer completed the tenth grade and received her GED. See Tr. 4/3/00 at 55.

35. On June 8, 1999, Mowrer, assisted by her present counsel Nina B. Shapiro, Esquire, sent a letter to Lovitz releasing him as her attorney in this matter. See Def.'s Ex.

⁶ By this point in time, Shaffer had also settled her case against Warner-Lambert.

⁷ Local Rule 41.1(b) provides:
Whenever in any civil action counsel shall notify the Clerk or the judge to whom the action is assigned that the issues between the parties have been settled, the Clerk shall, upon order of the judge to whom the case is assigned, enter an order dismissing the action with prejudice, without costs, pursuant to the agreement of counsel. Any such order of dismissal may be vacated, modified or stricken from the record for good cause shown, upon the application of any party served within ninety (90) days of the entry of such order of dismissal.
Loc. R. Civ. Proc. 41.1(b).

Mowrer-15. Before sending the letter, Mowrer never informed Lovitz that she had not authorized him to settle her case nor had she agreed to a release of all claims, including her claim for long-term disability benefits, against Warner-Lambert. See Tr. 4/3/00 at 11-12. In the letter to Lovitz, Mowrer provided the following reason for her discharge of Lovitz: "I do not believe that you kept me appraised [sic] of my case nor explained legal documents and proceedings to my understanding. I do not feel comfortable signing the proposed Agreement and General Release. The Agreement is one-sided towards the rights and protection of only Warner-Lambert." See id. at 86-87; Def.'s Ex. Mowrer-15.

36. Warner-Lambert subsequently filed the instant motion to enforce the settlement agreement. Mowrer responded and filed both a motion to strike the June 2, 1999 Order of Dismissal and a petition to file an amended complaint.

II. APPLICABLE LEGAL PRINCIPLES

1. A district court may enforce a settlement agreement if the court expressly retains jurisdiction in the dismissal order. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 380-81 (1994); Gugel v. Consolidated Rail Corp., No. CIV.A. 91-5304, 1994 WL 672619 at *1 (E.D. Pa. Nov. 29, 1994).

2. Local Rule of Civil Procedure 41.1(b) provides that a party seeking to vacate, modify, or strike a court's order of

dismissal bears the burden of showing good cause why the order should be set aside. See Wyndmoor Learning Ctr. v. City of Wilmington, No. CIV.A. 93-4217, 1996 WL 117471, at *7 (citing Capital Controls Co. v. Aetna Cas. & Sur. Co., No. CIV.A. 88-7175, 1989 WL 167396, at *2 (E.D. Pa. Aug. 2, 1989) and Fulton v. Amoco Oil Co., No. CIV.A. 87-4783, 1988 WL 74961, at *1 (E.D. Pa. July 11, 1988)). In this case, Mowrer is the party seeking to set aside the court's dismissal order. Conversely, Warner-Lambert is seeking to enforce the Settlement Agreement claiming that Mowrer's attorney had actual authority to settle the case on her behalf. Where the issue whether the dismissal order, entered based upon a representation that the matter had been settled, should be set aside turns on whether the attorney had express authority to settle the case, the burden of proof rests on the party asserting the authority. Thus, the burden is on Warner-Lambert to show that Mowrer expressly authorized Lovitz to settle her case for \$2,000 in return for confidentiality, a general release, and a no reinstatement obligation.⁸

⁸ Under Pennsylvania law, settlement agreements are highly favored. Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick, 587 A.2d 1346, 1348-51 (Pa. 1991); see also Pennwalt Corp. v. Plough, Inc., 676 F.2d 77, 80 (3d Cir. 1982). Indeed, it is presumed that a settlement agreement entered into by an attorney has been authorized by the client, "although rebuttal of the presumption will render the purported settlement agreement ineffective." See In re Condemnation, 699 A.2d 1331, 1334 (Pa. Commw. Ct. 1997) (citing Garabedian v. Allstates Eng'g Co., 811 F.2d 802, 803 (3d Cir. 1987)). Thus, once Mowrer asserted that she did not authorize Lovitz to settle the case on

3. Although, in this case, jurisdiction is predicated upon the presence of a federal question, see Compl. ¶ 3, the court will apply Pennsylvania substantive law because the settlement of a lawsuit and the relationship between an attorney and his or her client are areas traditionally governed by state law and there is no conflicting federal interest. See Tiernan v. Devoe, 923 F.2d 1024, 1032-33 (3d Cir. 1991) ("Because our focus is on an attorney's relationship with his clients, no substantial federal interest is affected here, and we opt for state law."); see also Nice v. Centennial Sch. Distr., No. CIV.A. 99-3262, 2000 WL 714667, at *2 (E.D. Pa. June 1, 2000) (stating that "when federal law does not expressly establish a rule of decision," and "where state law on the issue is well-developed and the application of state law will not impinge upon any federal interest, the court may 'borrow' state law to fill the gap in the federal statutory scheme").

4. Under Pennsylvania law, "[i]n general, an attorney has no authority to settle his client's case solely by virtue of his general power to handle the case." Garabedian v. Allstates Eng'g Co., 811 F.2d 802, 803 (3d Cir. 1987); see also Coulter v.

those terms, the burden shifted to Warner-Lambert to prove that Lovitz had express authority to do so. See Smith v. Delaware Valley Auto Spring Co., 642 F. Supp. 1112, 1116 (E.D. Pa. 1986) (placing burden of proof on defendants who were asserting that plaintiff's attorney had requisite authority to settle her lawsuit).

Kessler, No. CIV.A. 91-7765, 1995 WL 154819, at *3 (E.D. Pa. Mar. 24, 1995). Rather, an attorney can only settle his client's case if he or she has express actual authority to do so.

Tiernan, 923 F.2d at 1035; see also Farris v. JC Penney Co., 176 F.3d 706, 711 (3d Cir. 1999).

5. Express authority "must be the result of explicit instructions regarding settlement." Tiernan, 923 F.2d at 1033.⁹

6. A "prerequisite for a valid agreement is that the parties mutually assent to the terms and conditions of the settlement" at the time it was made. See Geiger Associates Plumbing, Heating & Air Conditioning, Inc. v. Geiger Services, Inc., No. CIV.A. 98-1315, 1998 WL 242598, at *1 (E.D. Pa. May 14, 1998)(quoting Morris v. Scardelletti, No. Civ.A. 94-3557, 1995 WL 708550, at *1 (E.D. Pa. Nov. 22, 1995) (citing Main Line Theaters, Inc. v. Paramount Film Distrib. Corp., 298 F.2d 801, 803 (3d Cir. 1962), aff'd, 96 F.3d 1433 (3d Cir. 1996)); Wyndmoor

⁹ The Pennsylvania Supreme Court has not yet recognized the doctrine of apparent authority to enforce a disputed settlement agreement. Farris, 176 F.3d at 713. In any event, the doctrine of apparent authority would not apply to this case because to do so, "the facts must show that the plaintiff[] (principal[]) communicated directly with defense counsel, making representations that would lead defense counsel to believe that the plaintiff['s] attorney had authority to settle the case." Id. at 712. Mowrer never communicated directly with defense counsel at any time during these proceedings. See, e.g., Delaware Valley Auto Spring, 642 F. Supp. at 1115 (finding no apparent authority given lack of evidence that plaintiff made any representation to defendants that could have led defendants to believe plaintiff's counsel had authority).

Learning Ctr., 1996 WL 117471, at *6 (E.D. Pa. Mar. 12, 1996)
(same).

7. "An agreement to settle a law suit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing." Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970); see also Ferranti Int'l, PLC v. Jasin, No. CIV.A. 98-CV-5412, 2000 WL 632994, at *6 (E.D. Pa. May 5, 2000) ("Pennsylvania courts have held that oral settlement agreements may be enforceable without a written document.") (citing Kazanjian v. New England Petroleum Corp., 480 A.2d 1153, 1157 (Pa. Super. Ct. 1984)); Anderson v. United States Postal Serv., No. CIV.A. 97-3112, 1998 WL 67542, at *1 (E.D. Pa. Feb. 19, 1998) (enforcing settlement where plaintiff, after orally agreeing to terms of settlement, balked at signing release included in settlement document).

8. "[A] Settlement Agreement is still binding, even if it is clear that a party had a change of heart between the time [s]he agreed to the terms of the settlement and when those terms were reduced to writing." McCune v. First Judicial District of Pennsylvania Probation Dep't, ___ F. Supp.2d ___, No. CIV.A. 99-3249, 2000 WL 680819, at *1 (E.D. Pa. May 25, 2000) (citing Gross v. Penn Mutual Life Insurance Co., 396 F. Supp. 373, 375 (E.D. Pa. 1975)); see also Morris v. Scardelletti, No. CIV.A. 94-

3557, 1995 WL 708550, at * 1 (E.D. Pa. Nov. 22, 1995) (same), aff'd, 96 F.3d 1433 (3d Cir. 1996); Reed v. American Foods Equipment Co., No. CIV.A. 92-5057, 1994 WL 85700, at *1 (E.D. Pa. Mar. 18, 1994) (granting defendant's motion to enforce settlement agreement finding that plaintiff initially assented to settlement). Likewise, under Rule 41.1(b), good cause is not demonstrated simply because a party changed his or her mind after entering into an otherwise valid settlement agreement. See Capital Controls Co. v. Aetna Cas. & Sur. Co., No. CIV.A. 88-7175, 1989 WL 167396, at *2 (E.D. Pa. Aug. 2, 1989).

9. A party to a settlement agreement cannot avoid the agreement simply by arguing that she did not foresee the consequences of a particular term. American Health Sys., Inc. v. Liberty Health Sys., No. CIV.A. 90-3112, 1993 WL 49000, at *5 (E.D. Pa. Feb. 22, 1993).

III. CONCLUSIONS OF LAW¹⁰

Based on the testimony detailed above and the lack of reference in the documentary evidence or pleadings to Mowrer's alleged desire to obtain long-term disability benefits as a condition of settlement or concerning Lovitz' alleged non-

¹⁰ To the extent these conclusions of law include conclusions of law or mixed findings of fact and conclusions of law, these findings and conclusions are hereby adopted by this court.

authority to settle her lawsuit, and based upon the applicable principles of law, the court concludes the following:

1. The court has jurisdiction to enforce the settlement agreement in this matter because the court expressly retained jurisdiction in its order dismissing the case.¹¹

2. Warner-Lambert has satisfied its burden of showing that Mowrer expressly authorized Lovitz to settle her case against Warner-Lambert in exchange for \$2,000, a general release of "any" and "all" claims, confidentiality, and no obligation by Warner-Lambert to reinstate her.¹²

3. The effectiveness of Mowrer's oral agreement to settle the case is not contingent upon execution of a written agreement.¹³

4. Mowrer's later change of heart, after retaining new

¹¹ The court twice extended its jurisdiction upon Mowrer's request. See doc. ## 22, 24.

¹² Moreover, a "[d]efendant[] ha[s] no obligation to suggest to [a] plaintiff additional settlement terms [s]he might want to consider." American Health Sys, 1993 WL 49000, at *5. Thus, Goldich's lack of knowledge regarding Mowrer's non-receipt or desire to receive long-term disability benefits is irrelevant because Goldich had no duty to suggest any additional terms that Mowrer might have considered important.

¹³ A principal may promptly repudiate an agent's actions. See Farris, 176 F.3d at 712 n.4. For the reasons discussed in note 4, supra, the court finds Mowrer's testimony regarding her alleged disavowal to Hyman Lovitz of any settlement authority not to be credible.

counsel,¹⁴ and/or her subsequent appreciation of the consequences of the settlement agreement, and/or her belief that she could have obtained a more favorable result do not justify vacation of the dismissal order.¹⁵

IV. CONCLUSION

For the reasons set forth above, the settlement agreement is enforceable, Warner-Lambert's motion to enforce the settlement agreement will be granted, Mower's motion to strike

¹⁴ Nothing in this opinion is intended to suggest, nor was the question before this court, whether Lovitz' conduct in negotiating the agreement with Warner-Lambert and/or reviewing the agreement with Mowrer prior to Mowrer's consent to the settlement may be a breach of any legal duty on the part of Lovitz. See McMahon v. Shea, 688 A.2d 1179, 130-32 (Pa. 1997) (agreeing that "the policy which encourages settlements of law suits does not operate to relieve a lawyer from a duty to inform his or her client of all relevant considerations before the client enters and signs a complex legal agreement") (internal quotations and citations omitted).

¹⁵ The Third Circuit recently addressed the level of authorization an attorney must possess from his or her client before he or she may settle the client's lawsuit. See Farris v. JC Penney Co., 176 F.3d 706 (3d Cir. 1999). In Farris, the trial court found that the plaintiffs had not authorized their attorney to settle their claim, noting that minutes after the court set forth the terms of the settlement on the record and discharged the jury, Mrs. Farris personally challenged her attorney and then immediately informed defense counsel that she had never authorized her attorney to settle. Id. at 710. Despite this evidence, the court concluded that the plaintiffs' actions "cloaked their attorney" with apparent authority. See id. The Third Circuit reversed, finding that the circumstances of that case did not call for an exception to the general rule requiring an attorney to have actual authority to settle an action. Id. at 711. In contrast, here the court finds that Mowrer expressly authorized Lovitz to settle her claim.

the order of dismissal will be denied, Mowrer having failed to show good cause for setting aside the order, and Mowrer's petition for leave to amend her complaint will be denied as futile.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA S. MOWRER, : CIVIL ACTION
 : NO. 98-2908
Plaintiff, :
 :
v. :
 :
WARNER-LAMBERT COMPANY, :
 :
Defendant. :

ORDER

AND NOW, this **13th** day of **July, 2000**, upon consideration of defendant's motion to enforce settlement agreement, plaintiff's response thereto, defendant's reply, plaintiff' sur-reply, plaintiff's motion to strike the June 2, 1999 order of dismissal and petition for leave to amend the complaint, and defendant's response thereto, it is hereby **ORDERED** that:

1. Defendant's motion to enforce the settlement agreement (doc. # 25) is **GRANTED**;

2. Plaintiff's motion for leave to file a sur-reply in opposition to defendant's motion to enforce settlement agreement (doc. # 28) is **GRANTED**; and

3. Plaintiff's motion to strike order of dismissal and petition to amend the complaint (doc. # 30) are **DENIED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.