

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

RICARDO GRAY : CIVIL ACTION
: :
v. : :
: :
HYGRADE FOOD PRODUCTS : :
ASSOCIATES, INC. : No. 99-5228

MEMORANDUM ORDER

Presently before the court is plaintiff's counsel's Motion Requesting Order to Permit Deposit of Settlement Funds Into Escrow and Make Distribution.

Upon advice that the parties had agreed to settle the instant action for \$6,500 at a conference with Chief Magistrate Judge Melinson, the Court dismissed the action pursuant to L. R. Civ. P. 41.1(b). The settlement agreement provided that \$2,200 of the \$6,500 would be remitted to the Philadelphia District Attorney's Office of Child Support Enforcement pursuant to a lien for unpaid child support. \$4,300 was to be paid to plaintiff's counsel for costs and compensation under a contingency fee agreement. It appears that plaintiff later refused to sign a written settlement and release agreement prepared by defendant at plaintiff's counsel's request. Defendant then refused to provide the agreed-upon funds to plaintiff's counsel.

This motion is in fact one to enforce a settlement agreement. Indeed, counsel's proposed order contains language that "the settlement entered into before" Judge Melinson "is binding" and directing the requested disbursement of funds on

that basis. In his supporting memorandum, counsel characterizes his pleading as a "motion to enforce settlement and direct defendant to pay in accordance with the agreement."

If plaintiff assented to the agreement, he is bound by it. See Mattingly v. City of Chicago, 897 F. Supp. 375, 376-77 (N.D. Ill. 1995) (granting motion to enforce settlement agreement although plaintiff refused to sign after orally assenting). A settlement agreement, voluntarily entered into between the parties, is binding upon them whether or not it is reduced to writing and whether or not a party subsequently had a change of heart. See Green v. John H. Lewis Co., 436 F.2d 389, 390 (3d Cir. 1970); Bibawy v. Ball, 1994 WL 523214, *3 (E.D. Pa. Sept. 23, 1994). While it appears that plaintiff was present and orally assented to the terms of the settlement agreement at the conference before the Chief Magistrate Judge, this is not altogether clear.

In any event, the court has no jurisdiction to enforce the instant settlement agreement. It was not incorporated into an order of the court and the court did not retain jurisdiction upon dismissal. There is no independent basis for subject matter jurisdiction. See Sawka v. Healtheast, Inc., 989 F.2d 138, 141 (3d Cir. 1993); Kuney v. Cohen, 1998 WL 855488, *1 (E.D. Pa. Dec. 10, 1998). Any party may, of course, initiate an action to enforce the agreement in an appropriate state court.

ACCORDINGLY, this day of October, 2001, upon consideration of plaintiff's counsel's Motion Requesting Order to Permit Deposit of Settlement Funds Into Escrow and Make Distributions (Doc. #21), and defendant's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED** without prejudice to any party to pursue relief in a state court with subject matter and personal jurisdiction.

BY THE COURT:

JAY C. WALDMAN, J.