



On May 20, 2011, Claimant filed a motion for sanctions against ISIF. Claimant had previously entered into a lump sum settlement agreement (“LSSA”) with ISIF, but the Commission declined to approve the LSSA because it failed to meet the requirements set forth in *Wernecke v. St. Maries Joint School District No. 401*, 147 Idaho 277, 207 P.3d 1008 (2009). In his subsequent motion for sanctions, Claimant stated that he had suffered financial hardship because the LSSA was not approved, and he argued that the failure of the LSSA was due to ISIF’s refusal to insert language in the LSSA that would have rendered it consistent with *Wernecke*. Essentially, Claimant blamed ISIF for his hardship. Claimant asked the Commission to order ISIF to 1) pay Claimant reasonable attorney fees, 2) pay Claimant punitive costs and damages, to be determined at a hearing, and 3) compensate the Commission for the “lost time” of the Commissioners and staff who considered the LSSA.

ISIF responded that Claimant and Claimant’s counsel were aware at the time the LSSA was submitted that it might not be approved under *Wernecke*, but Claimant chose to sign the agreement anyway. ISIF disagreed that its actions caused Claimant hardship, characterizing Claimant’s motion as “frivolous.”

Claimant replied that ISIF had a duty to prepare the LSSA in a manner that would be consistent with *Wernecke*. However, ISIF refused to do so. Such refusal constituted bad faith and caused the LSSA to be disapproved by the Commission. Claimant argued that his settlement agreement with ISIF was a legally binding, enforceable contract, that good faith and fair dealing are implied obligations in every contract, and that ISIF acted in bad faith by not inserting language consistent with *Wernecke* in the LSSA. Consequently, the Commission should order ISIF to “submit ... a lump sum settlement agreement that complies with the standards expressed in *Wernecke*.” In the alternative, the Commission should hold a hearing to determine the “nature

and extent of damages suffered” by Claimant “as a result of ... ISIF’s actions.” *See* Claimant’s Reply to ISIF’s Response to Motion for Sanctions, p. 7.

On September 9, 2011, the Commission issued the Order Denying Request for Sanctions, noting that the Commission “does not award punitive damages for an unapproved settlement,” as there is “nothing in the regulatory or statutory scheme [that] requires parties to settle their disputes.” *See* Order, pp. 2-3. Whatever Claimant’s reservations about the LSSA, he voluntarily signed it, thus subscribing to the language therein. Claimant failed to cite a basis for which sanctions could be imposed.

On reconsideration, Claimant argues that the Commission misunderstood the basis of his motion for sanctions. Claimant did not ask that sanctions be imposed because the LSSA was not approved. Rather, sanctions should be imposed because ISIF knowingly “sabotaged” the LSSA by refusing to insert language that would satisfy the *Wernecke* requirements. Claimant repeats his argument that when ISIF agreed to settle the case, it formed an oral contract with Claimant and was thus obliged to act in good faith under the law of contracts. By refusing to include language consistent with *Wernecke*, ISIF acted in bad faith, as it knowingly caused the LSSA to be disapproved, causing hardship to Claimant. Therefore, Claimant is entitled to one of two remedies: either the Commission should order ISIF to submit an LSSA that complies with *Wernecke*, or the Commission should order ISIF to pay to Claimant the sum of \$50,000.00, which Claimant would have received had the LSSA been approved.

ISIF denies that it acted in bad faith. It notes that Claimant and Claimant’s counsel were aware that the LSSA might not be approved by the Commission, and that the agreement was not binding or enforceable without Commission approval. In the absence of a binding agreement, ISIF is not obliged to pay anything to Claimant, because there is no contract to enforce.

Furthermore, ISIF argues that Claimant's motion for reconsideration should be denied because the requested relief is not the same as the sanctions requested in the original motion for sanctions.

Regardless of the relief requested, we find that reconsideration is not warranted. Claimant is incorrect that his motion for sanctions was misunderstood. The Commission addressed Claimant's argument about ISIF's refusal to include certain language in the agreement when the Commission observed:

It is evident from the submitted documents that Claimant did not receive all the desired concessions from the ISIF regarding the wording of the settlement, and that Claimant felt that his requested changes would have satisfied the Commission and prevented the foreclosure of Claimant's house....Understandably, Claimant was frustrated about the settlement, yet still chose to execute and submit the same to the Commission.

See Order, p. 3. Thus, the Commission has already considered Claimant's arguments concerning the language of the LSSA and ISIF's alleged bad faith, but was not persuaded by them. Claimant's argument about bad faith might be more compelling if ISIF had promised to include language consistent with *Wernecke* in the LSSA, only to renege on that promise; however, Claimant has not shown that ISIF made such a promise, and Claimant has not offered additional arguments that would support imposing sanctions. Therefore, Claimant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this   1st   day of   November  , 2011.

INDUSTRIAL COMMISSION

  /s/    
Thomas E. Limbaugh, Chairman

/s/  
Thomas P. Baskin, Commissioner

/s/  
R.D. Maynard, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the   1st   day   November  , 2011, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

STARR KELSO  
PO BOX 1312  
COEUR D'ALENE ID 83816

THOMAS CALLERY  
PO BOX 854  
LEWISTON ID 83501

ERIC S BAILEY  
PO BOX 1007  
BOISE ID 83701

eb

/s/