

**BEFORE THE HUMAN RIGHTS COMMISSION
FOR MONTGOMERY COUNTY
Case Review Board**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660 (240) / Fax (240) 777-6665**

MARK POWELL

Complainant

v.

**BERKEL & COMPANY
CONTRACTORS, INC.**

Respondent

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Human Rights Commission
HRC No. E-05913
OZAH Referral No. HR 18-01

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Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

**HEARING EXAMINER'S REPORT AND RECOMMENDATION OF DISMISSAL OF
THE CASE BASED ON THE COMPLAINANT'S NOTICE OF WITHDRAWAL AND
REQUEST FOR DISMISSAL WITH PREJUDICE**

The purpose of this Report and Recommendation is to close the record and to recommend that the Case Review Board dismiss the above-captioned matter pursuant to the Complainant's executed "Notice of Withdrawal and Request for Dismissal with Prejudice," dated March 28, 2018. Docket No. 12. The hearing had been scheduled for September 17, 2018. Docket No. 9.

The above-captioned complaint alleges unlawful discrimination in employment on the basis of race and retaliation. Docket Nos. 1, 2 and 3. The Respondent denies these allegations. The Director of the Office of Human Rights (OHR) determined that reasonable grounds existed to believe that a violation of Chapter 27 of the Montgomery County Code has occurred (Docket No.

3). The Director also certified that conciliation in OHR has failed (Docket No. 4). By Order dated December 6, 2017 and delivered to the Office of Zoning and Administrative Hearings (OZAH) on that date, the Case Review Board of the Montgomery County Commission of Human Rights (MCCHR) referred the above-captioned complaint to OZAH for the purpose of conducting a public hearing under the provisions of Montgomery County law, and thereafter submitting a written Order and Recommendation to the Case Review Board. Docket No. 1. OZAH accepted this referral and has captioned the matter as Case No. HR 18-01.

On December 11, 2017, the Hearing Examiner issued a Scheduling and Procedures Order in the above case, and on January 9, 2018, attorneys for all parties attended a pre-hearing conference in the Office of Zoning and Administrative Hearings (OZAH). On January 12, 2018, the Hearing Examiner issued a Revised Scheduling and Procedures Order setting forth the agreed upon dates for discovery, submission of pre-hearing statements and pre-trial motions, and the public hearing. Docket No. 9.

On March 28, 2018, the Complainant's counsel advised the Hearing Examiner, by email (Docket No. 11), that

... the parties have reached an amicable resolution of Mr. Powell's claims. As such, Mr. Powell respectfully requests to withdraw his complaint from the Commission and dismiss his pending action against Respondent with prejudice.

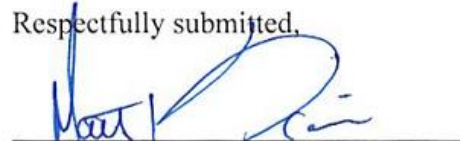
Attached to the email was "Complainant Mark Powell's Notice of Withdrawal and Request for Dismissal with Prejudice," reportedly signed by his attorney, Matthew E. Kreiser. Docket No. 11(a). The formal executed copy of that stipulation was filed on April 3, 2018 Docket No.12. It recites:

Complainant, Mark Powell, by and through his undersigned counsel, hereby requests to withdraw his complaint from the Commission and dismiss his action against Respondent, Berkel & Company Contractors, Inc., with prejudice. In support thereof, Complainant states as follows:

1. On or around the end of January 2018, the parties to this matter reached an amicable resolution in principal, resolving Complainant's claims.
2. In exchange for good and valuable consideration, the terms of which the parties expressly agreed to keep strictly confidential, on March 6, 2018, Complainant executed a Release Agreement to the satisfaction of Respondent.
3. Complainant states that the terms of his executed Release Agreement and consideration received in exchange thereof were the product of negotiation by his chosen counsel.
4. Complainant further states that he has had a satisfactory opportunity to review the terms of the Release Agreement, and his acceptance of the terms of the Agreement was not a product of coercion, misinformation, or bad faith.
5. Thus, due to the amicable resolution of his claims against Respondent, Complainant respectfully requests to withdraw his complaint from the Commission and dismiss his pending action against Respondent with prejudice.

DATED: March 28, 2018

Respectfully submitted,



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Counsel for Complainant

Section 2A-10 (a) of the Montgomery County Administrative Procedures Act provides in pertinent part that “any decision stipulated to or consented to by the parties need only be reflected by an appropriate written order or consent decree.” As provided in Montgomery County Code § 27-7 (i), “[t]he Case Review Board must issue a final decision on a complaint according to Section 2A-10, this Chapter and Commission rules.”

Section 2A-10 (g) of the Montgomery County Administrative Procedures Act provides:

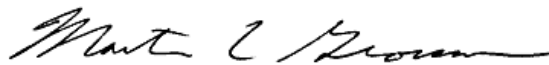
(g) Informal disposition. Where appropriate to the nature of the proceedings and the governing laws, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

The Complainant's signed "Notice of Withdrawal and Request for Dismissal with Prejudice" is an appropriate "informal disposition" of the case as provided in Section 2A-10 (g), and as a result, there is no reason to conduct a formal hearing. Therefore, the Hearing Examiner accepts the "Notice of Withdrawal and Request for Dismissal with Prejudice" and all other previously filed documents into the administrative record and hereby closes the record.

Since the Hearing Examiner does not have the authority to issue a final decision on behalf of the Commission or its Case Review Board, the Hearing Examiner is returning the case file to the Board with the recommendation that the Board accept the Complainant's "Notice of Withdrawal and Request for Dismissal with Prejudice", and dismiss the Complaint with Prejudice.

Dated: April 5, 2018

Respectfully submitted,



Martin L. Grossman
Hearing Examiner
Director, Office of Zoning and Administrative Hearings

Copies to:

Matthew Kreiser, Esquire
Jamie Walker Luse, Esquire

Loretta J. Garcia, Esquire
Manager of Enforcement Programs
Office of Human Rights