

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

June 18, 2009

H. Clay Davis, III, Esquire
303 N. Bedford Street
P. O. Box 744
Georgetown, DE 19947

H. Garrett Baker, Esquire
Elzufon, Austin, Reardon,
Tarlov & Mondell
300 Delaware Avenue, 17th Floor
Suite 1700
P. O. Box 1630
Wilmington, DE 19801

RE: Donna Shortridge v. Delaware Hospice
Civil Action No. S08C-11-017 THG

Dear Counsel:

Before the Court are cross motions for summary judgment. On April 18, 2008, Plaintiff was awarded attorney's fees and a medical witness fee pursuant to a decision of the Industrial Accident Board. What the Board did is not in dispute.

On May 22, 2008, correspondence from Plaintiff's attorney's office was sent to Defendant's attorney, Mr. Baker. That correspondence enclosed a copy of Plaintiff's attorney's law office check in the amount of \$800.00, which was the payment for the doctor pursuant to the award. Additionally, a court reporter's bill for \$130.80 was enclosed. The correspondence closed with the following:

"The total amount of \$932.80 is submitted for payment and should be reimbursed to our office."

No payment was made within thirty (30) days.

On August 11, 2008, correspondence was generated from Plaintiff's attorney's law office to Mr. Baker addressing a tardy payment as to the disability benefits to Ms. Shortridge, as well as renewing the request for payment of the doctor's bill and court reporter's bill in the amount of \$932.80. The relevant sentence in the August 11, 2008 correspondence is as follows:

This is a demand in accordance with statute and case law, for the immediate payment of the expert fees in the amount of \$932.80 and for \$1,173.32 for the four weeks of temporary total disability payments due to our client.

It is undisputed that the amount claimed in the present Huffman suit is \$932.80.¹

Plaintiff's position is that the May 22, 2008 letter constituted a Huffman demand, and, therefore, the tardy payment triggers the Huffman sanctions.

Defendant's position is that the May 22, 2008 letter was not a demand but a notification of the amount due and owing. Defendant argues that any ambiguity as to whether or not the May 22, 2008 letter was a Huffman demand was put to rest when the August 11, 2008 letter was sent by Plaintiff, clearly making a Huffman demand.

The parties concede that there is no magic language that has been blessed by the courts as to what constitutes a proper Huffman demand. Based upon the holding below, the following comments are dicta. Between counsel whose expertise is in the field of industrial accident compensation and defense of same, it is clear to me that the May 22, 2008 letter would constitute a demand. That letter sets forth the amount owed, proof of the amount owed, and a request to be paid, i.e., Plaintiff submitted it for payment. My concern in blessing this language is that there should not be a standard for parties represented by counsel and a separate standard for pro se litigants. Unsophisticated pro se litigants may not know of a Huffman demand, and there is no "watch out" language that would concern a pro se litigant.

¹“Complaints filed under 19 *Del. C.* § 2357 to collect unpaid worker's compensation awards have come to be known as “*Huffman*” claims. *Huffman v. C.C. Oliphant & Son, Inc.*, 432 A.2d 1207 (Del. 1981); *Rawley v. J.J. White, Inc.*, 2006 Del. Super. LEXIS 254 at *5 citing *National Union Fire Ins. Co. v. McDougall*, 877 A.2d 969, 971 (Del. 2005) (Under 19 *Del. C.* § 2537 and the *Huffman* case, an employer can be liable for liquidated damages if it is in default for thirty days after demand for payment of an amount due under the Worker's Compensation law.).

Nevertheless, the problem in this case for Plaintiff is that whatever merit Plaintiff may have arising from the May 22, 2008 correspondence was waived when the Plaintiff on August 11, 2008 stated that they were making a demand in accordance with statute and case law for the payment of the expert fees. By making this demand on August 11, 2008, and referring to the relevant case law and statutes, the Plaintiff basically gave the Defendant another thirty (30) day window in which to make the payment. Defendant did this.

Therefore, based upon these facts, Plaintiff's attempt to base a claim on the May 22, 2008 correspondence must fail as he waived any Huffman claim arising out of the May 22, 2008 correspondence by renewing the request in August.

Defendant's Motion for Summary Judgment is granted.

Plaintiff's Motion for Summary Judgment is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj
cc: Prothonotary