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New York State Department of Labor
Eliot Spitzer, Governor
M. Patricia Smith, Commissioner

April 27, 2007



Re: Unpaid Wage Claim
Counsel's Office File No. RO-07-0028

Dear [REDACTED]:

I have been asked to respond to your letter of March 15, 2007 to Labor Standards Investigator Julie Winterstein. This letter was apparently sent in the context of an investigation currently being conducted by the Department of Labor in regard to a claim of unpaid wages. In such letter you refer to a recent class action suit, *Curtis v. University of Rochester*, which, you say, concerned an employer's alleged "violations of New York Labor Law and the Fair Labor Standards Act by failing to pay wages for hours worked." You claim that a settlement agreement was filed in this matter in February 2006 under which certain amounts of money were paid to members of the class. You have apparently sent this letter to claim a defense against the Department's investigation of this situation and any orders that might be issued thereupon. Upon examination of your letter and the copies of the Court's Order and the Settlement Agreement and Release provided by you on April 2, 2007, this letter is intended to advise you that the settlement of this class action suit has no relevance to any Departmental investigation of this matter and only limited application to any orders for unpaid wages that the Department may issue.

You are apparently arguing that the settlement of the above-cited class action suit bars the Department of Labor from taking any action to enforce the New York State Labor Law in regard to the parties to that suit and any other employees who were not members of the class. This argument has no basis in law for the following reasons: the issues inherent in the Department's law enforcement duties and authority are different from those in the individual employees' suit for unpaid wages; and, the Department of Labor was neither a party to the class action suit nor the settlement of it.

Your defense is, essentially, a claim of "collateral estoppel," a legal doctrine "based on the general notion that it is not fair to permit a party to relitigate an issue that had already been decided against it," (*Kaufman v. Lilly & Co.*, 65 N.Y.2d 449, 455 (1985)). The doctrine of collateral estoppel states that when an issue has been decided in a court action, that issue is applicable to all parties to the action, and those parties may not relitigate that issue in any other forum. The essential ingredients of collateral estoppel are:

First, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination (*Kaufman v. Lilly & Co.* at 455).

Upon examination of the Court's Order of July 25, 2006 and the Settlement Agreement and Release executed on February 15, 2006 upon which the Order was based, it is beyond question that the Department of Labor was neither a party to *Curtis v. University of Rochester* nor a signator to the Settlement Agreement and Release. Therefore, on those bases alone, neither the Order nor the Settlement Agreement and Release are binding on the Department of Labor in the course of any action taken by it to enforce the Labor Law of the State of New York.

The inapplicability of the Court's Order may be illustrated by the decision of the Court of Appeals in *Matter of Juan C. v. Cortines*, 89 N.Y.2d 659 (1997). In that case, a student was allegedly found in possession of a gun while in school. Although the gun was excluded from evidence in a Family Court juvenile delinquency proceeding, the Court of Appeals held that that exclusion did not apply to a Board of Education disciplinary proceeding because, among other things, the Board of Education was not a party to the juvenile delinquency proceeding.

Just as the Court's Order in *Curtis v. University of Rochester* is not binding on the Department of Labor as it was not a party to those proceedings, the Settlement Agreement and Release in that action, essentially a contract entered into among the parties to that action, is not binding on the Department as it was not a party to that agreement. It is well-settled and, in fact, "(i)t goes without saying that a contract cannot bind a nonparty," (*Equal Employment Opportunity Commission v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002)). In *Waffle House* the Supreme Court of the United States held that an arbitration agreement between an employer and an employee did not bar a government agency from exercising its statutory authority to enforce applicable laws as against the employer. The Court held that "whenever the (agency) chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply to provide make-whole relief for the employee, even when it pursues entirely victim-specific relief. To hold otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the (agency's) statutory function," (534 U.S. at 296).

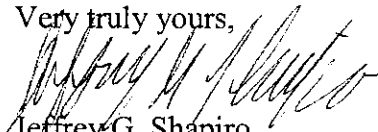
The Department of Labor's interest in enforcing the Labor Law is different from the interest of workers in obtaining unpaid wages owed. The Department seeks to vindicate a public interest by ensuring compliance with all applicable labor laws, rather than merely obtaining some form of payment for certain classes of employees. In this case, the extent of this difference cannot be known until a full investigation of this matter has been completed by the Department's Division of Labor Standards. Please be advised that all employers are required, by law, to cooperate fully with such investigations (*see* Labor Law §§21(1), 21(2), 25, 26, 31 and 32).

Upon completion of this investigation, if the Commissioner determines that any applicable labor laws have been violated, any orders that may be issued directing compliance with those laws may take into account any wages or benefits paid pursuant to the aforementioned settlement agreement. Therefore, while the settlement agreement is not binding on the Department of Labor, and cannot serve as a "defense" to the Department's investigation of this matter, any monies paid in compliance with that separation agreement may be one factor in the determinations made by the Commissioner at the conclusion of the investigation.

This opinion is based upon the information provided in your letter of March 15, 2007 and the documents provided on April 2, 2007. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts that have not been disclosed.

If you have any further questions, please feel free to contact me.


Very truly yours,



Jeffrey G. Shapiro
Senior Attorney

JGS:

cc: Carmine Ruberto


Julie Winterstein