

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LUANN STRALEY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C. A. No. 10-330-LPS-MPT
	:	
ADVANCED STAFFING, INC.,	:	
a Delaware corporation,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION ORDER

This Order addresses the motion by plaintiff LuAnn Straley (“Straley”) to reopen this case and enter judgment against defendant Advanced Staffing, Inc. (“employer”) filed on September 30, 2010.¹

Straley initiated this matter on April 22, 2010 alleging that employer violated the Fair Labor Standards Act (“FAIR”) by failing to pay overtime compensation she earned while in its employ. Because of a term in Straley’s employment contract, the employer demanded that the matter be arbitrated. Thereafter, the parties stipulated to dismiss the matter without prejudice on June 11, 2010 and proceeded to arbitration. The arbitration was held before Laurence V. Cronin, Esq. on July 20, 2010. As a result of the arbitration in which both parties were represented, Mr. Cronin found in favor of Straley and awarded her \$7,212.00 for her FAIR claim, along with attorneys’ fees in the amount of \$14,124.00 for a total award of \$21,336.

Because employer had not paid any portion of the arbitrator’s award nor

¹ D.I. 8.

indicated when or whether it intended to pay the award, Straley filed the present motion under consideration. In this motion, Straley maintains that entering judgment inclusive of counsel fees is appropriate under the circumstances and further notes that employer took no steps to challenge the process and/or the means by which judgment is being obtained.

A teleconference was held with counsel regarding this matter on October 8, 2010. During that teleconference, Joseph Naylor, Esq. counsel for employer, advised that he did not technically oppose the motion because employer was unsuccessful in arbitration. Counsel for employer was directed to file a response to Straley's motion within the required time period.² Employer filed a response on October 15, 2010 in which it "acknowledge[d] the arbitrator's award against it in the amount stated in Plaintiff's motion," as well as conceding "that it did not pursue any challenges to the process of the arbitration or the means in which [the] award was obtained." Employer specifically represented that it was taking no position on whether the matter should be re-opened or whether Straley is entitled to entry of judgment.³

Employer was the party who demanded arbitration. To proceed to arbitration, the parties chose to dismiss this matter without prejudice, leaving the option available for the matter to be reopened for enforcement of any arbitration award. No opposition to entry of judgment has been raised by employer. Therefore, for the reasons contained herein, this Court recommends that:

1. Judgment in the amount of \$21,336.00 (\$7,212.00 for claims under the Fair

² See Transcript of Teleconference October 8, 2010.

³ D.I. 10.

Labor Standards Act and \$14,124.00 for attorney's fees) be entered in favor of plaintiff Luann Straley and against defendant Advanced Staffing, Inc.

This Report and Recommendation Order is filed pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), and D. Del. LR 72.1. The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Report and Recommendation Order.⁴ The objections and response to the objections are limited to ten (10) pages each.

The parties are directed to the Court's standing Order in Non Pro Se matters for Objections Filed under Fed. R. Civ. P. 72, dated November 16, 2009, a copy of which is available on the Court's website, www.ded.uscourts.gov.

Date: December 8, 2010

/s/ Mary Pat Thyng
UNITED STATES MAGISTRATE JUDGE

⁴ Fed. R. Civ. P. 72(b)