

NO. CAAP-17-0000671

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

GAIL MILLER, Claimant-Appellant-Appellee,
v.
FHR ML OPERATING COMPANY, LLC, dba THE FAIRMONT ORCHID HAWAII,
Employer-Appellee-Appellant,
and
FIRMS CLAIMS SERVICES,
Third-Party Administrator-Appellee-Appellant.

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2015-227 (WH) (DCD NO. 9-13-01130))

ORDER APPROVING IN PART THE APRIL 4, 2018
STIPULATION TO DISMISS THE APPEAL
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon consideration of the Stipulation to Dismiss the Appeal, filed April 4, 2018, by Claimant-Appellant-Appellee Gail Miller (Miller), the papers in support, and the record, it appears that:

- (1) The appeal was docketed on November 15, 2017;
- (2) Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 42(b), the parties stipulate (1) to dismiss the appeal, (2) that Employer-Appellee-Appellant FHR ML Operating Company, LLC and Third-Party Administrator-Appellee-Appellant FIRMS Claims Services (collectively, Employer) shall pay Miller's attorney's fees and costs because she is the prevailing party,

and (3) that the Director of Labor and Industrial Relations' (Director) April 28, 2015 decision is affirmed. The stipulation is dated and signed by counsel for all parties appearing in the appeal;

(3) Because the appeal is being voluntarily dismissed, it would be inappropriate for the court to affirm the Director's April 28, 2015 decision, which would be a decision on the merits, otherwise the court will approve the stipulation; and

(4) To the extent the parties need this court to determine fees and costs, Miller must file a motion for attorney's fees and costs, consistent with HRAP Rule 39.

Therefore, IT IS HEREBY ORDERED that the Stipulation to Dismiss the Appeal is approved in part as follows:

(1) The stipulation to dismiss the appeal is approved, and the appeal is dismissed;

(2) The stipulation that Employer shall pay Miller's attorney's fees and costs is approved. To the extent the parties need this court to determine fees and costs, within ten days from the date of this order, Miller shall file a motion for attorney's fees and costs, consistent with HRAP Rule 39; and

(3) The stipulation that the Director's April 28, 2015 decision is affirmed is not approved.

DATED: Honolulu, Hawai'i, April 13, 2018.

Presiding Judge

Associate Judge

Associate Judge