

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 05 March 2015

CASE NO.: 2015-AIR-00008

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JOHN MARK,  
*Complainant,*

v.

KALITTA CHARTERS II, LLC,  
*Respondent.*

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**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises from a complaint of discrimination filed under the employee protection provision of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (“AIR”) 49 U.S.C. § 42121 as implemented by the regulations at 29 C.F.R. Part 1979 (2013). The formal hearing is set for February 26, 2015 in Denver, Colorado. A settlement judge proceeding was held with Administrative Law Judge Jonathan Calianos on January 30, 2015, during which the parties reached a settlement agreement in principal. On March 3, 2015, our office received the parties’ Confidential Release, Waiver and Settlement Agreement.

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the AIR whistleblower provisions. I find that the Settlement Agreement generally complies with the standard required and I will approve it pursuant to 29 C.F.R. § 1979.111(d)(2).

The parties intend the settlement agreement to be confidential. With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

In reviewing the Settlement Agreement, I also note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Agreement pertaining to the Complainant's current AIR case, 2015-AIR-00008. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

The parties choose Michigan law to control any dispute between them concerning the Agreement. As I construe this provision, it is not intended to and does not limit the authority of any federal court or the Secretary of Labor. It is an agreement between the parties, limited in its application to themselves. For the federal courts and the Secretary, the law and regulations of the United States control.<sup>1</sup>

Accordingly, it is **ORDERED** that:

- (1) The Settlement Agreement is **APPROVED**;
- (2) The Settlement Agreement shall be designated as confidential subject to the procedures requiring disclosure under FOIA;
- (3) The hearing set for February 26, 2015 was **CANCELED**;
- (3) The Complaint of John Mark is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

COLLEEN A. GERAGHTY  
Administrative Law Judge

Boston, Massachusetts

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<sup>1</sup> See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).