

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 22 November 2017

Case Nos.: 2017-AIR-00015
2017-FDA-00006

In the Matter of:

NONA FARRAR
Complainant

v.

**GATE GROUP US HOLDING, INC.,
GATE SAFE, INC., AND
GATE GOURMET, INC.**
Respondents

ORDER APPROVING SETTLEMENT AND DISMISSING CLAIM

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), which was signed into law on April 5, 2000. The Act includes a whistleblower protection provision, with a Department of Labor complaint procedure.¹ Implementing regulations are at 29 C.F.R. Part 1979, published at 67 Fed. Reg. 15453 (Apr. 1, 2002).

On November 13, 2017, the parties submitted a Joint Motion for Approval of Settlement Agreement Including General Release, for Dismissal of Complaint with Prejudice, and to Seal Settlement Agreement. They attached a full version of the Settlement Agreement Including General Release ("Settlement Agreement"), which they request be held under seal other than required under the Freedom of Information Act ("FOIA").

This Tribunal finds that the proposed Settlement Agreement is proper, and approves it with several caveats. First, language in this agreement purports to settle, release, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See*

¹ Pub. L. 106-181, tit. V, § 519(a), Apr. 5, 2000, 114 Stat. 145. *See* 49 U.S.C. § 42121.

Paragraphs 5, 7. The Tribunal limits its review to the asserted whistleblower claims only, as anything beyond that limitation exceeds this Tribunal's jurisdiction.

Second, this Tribunal only partially grants the parties motion with respect to sealing the Settlement Agreement. Per 29 C.F.R. §18.85(b), there is a presumption of public access to record materials, and any order that seals materials must "explain why the reasons to seal adjudicatory records outweigh the presumption of public access." The undersigned finds that Paragraph 2 of the Settlement Agreement contains confidential commercial and financial information; therefore, this Tribunal ORDERS only Paragraph 2 of the Settlement Agreement to be sealed per the parties' request. Moreover, the Tribunal has previously informed the parties, and now restates that the records of this Tribunal are subject to the Freedom of Information Act ("FOIA") and are generally available to the public.

This Office will place the Settlement Agreement in a sealed envelope within the public file. A copy of this Order will be affixed to this envelope. A redacted copy of the Settlement Agreement will be placed in the public file.

In the event that a FOIA request is made for access to the unredacted copy of the Settlement Agreement, the Department of Labor will provide the parties with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. However, the parties are reminded that the pre-disclosure notice procedure does not, in any way, constitute a finding that the Settlement Agreement, or any portion thereof, will be exempt from disclosure under FOIA. Similarly, this procedure does not suggest that the appropriate disclosure officer would ultimately decline disclosure of the settlement agreement to the FOIA requester, if such a FOIA request were received. *See* 29 C.F.R. § 70.26(f).

Order

1. The parties' requests to approve their Settlement Agreement, dismiss their AIR 21 claims, and file the redacted Settlement Agreement are GRANTED. **However, the parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 5 and 7 that are beyond its jurisdiction.**
2. The proposed settlement agreement is fair and reasonable as to the claims under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. None of the terms are against the public interest. The proposed "Settlement Agreement Including General Release" is APPROVED, and the parties are ORDERED to comply with its terms.

This matter is DISMISSED with prejudice. The hearing in this matter is hereby CANCELLED.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey