



Issue Date: 13 April 2016

CASE NO.: 2015-CPS-00005

IN THE MATTER OF

TAN TRAN

Complainant

v.

BEAUTICONTROL, INC./

TUPPERWARE BRANDS, CORP.

Respondent

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

This proceeding arises under the employee protection provisions of the Consumer Product Safety Improve Act of 2008, 15 U.S.S. § 2087 (“CPSIA” or “the Act”) and its implementing regulations found at 29 C.F.R. § 1983. A hearing in this matter was scheduled before the undersigned administrative law judge commencing on April 11, 2016 in Dallas, Texas. On March 8, 2016, the parties notified me that a settlement had been reached. The parties filed a Settlement and Final Release Agreement (“Agreement”) on March 21, 2016. *See* 29 C.F.R. § 1983.111.

The regulations implementing the CPSIA address settlements. Specifically, 29 C.F.R. §1983.111(d)(2) states:

At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1983.113 in Federal District Court. 29 C.F.R. § 1983.111(e).

The Agreement resolves the controversy arising from the complaint of Tan Tran (Complainant) against BeautiControl, Inc. and Tupperware Brands, Corp. (Respondents). This Agreement is signed by Complainant and Respondents. The settlement provides that

Complainant will release Respondent from claims arising under the CPSIA as well as various other laws. This Order, however, is limited to whether the terms of the Agreement are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondents violated the CPSIA.

The Agreement provides that the Respondents shall make payment to Complainant of the amounts agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The settlement also provides for payment of Counsel for Complainant's attorney's fees and litigation costs from the settlement agreement, which are hereby approved. The Agreement also provides that Complainant will release any and all claims against the Respondents arising out of his employment with the Respondents, and accordingly, the Complainant's CPSIA claim will be dismissed with prejudice.

Complainant and Respondents were ably represented by counsel. Complainant represents his understanding of the Agreement's provisions and voluntarily accepts the settlement. Having reviewed the Agreement, I find the provisions are fair, adequate, and not contrary to the public interest. Further, the settlement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.

Regarding the parties' confidentiality agreement, it has been held in a number of cases with respect to confidentiality that the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman TankLines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The monetary terms of the settlement qualify as confidential and privileged commercial and financial information within the meaning of Exemption 4 of the FOIA, 5 U.S.C. § 522(b)(4), and thus are protected from disclosure by any federal agency. Respondents have so designated and marked those provisions on the copy of the Agreement. In the event the United States Department of Labor, Occupational Safety and Health Administration, or any related component receives a request for disclosure of the monetary terms set forth in the attached agreement, Respondents expect the receiving agency or component to comply fully with its obligations under Section 1 of Executive Order 12,600 (June 23, 1987) and 29 C.F.R. § 70.26 (2012), to give Respondents prompt notice of the request, to give Respondents a reasonable time to object in writing to disclosure, to consider Respondents' objections, and, in the event the disclosure officer decides to disclose information over Respondents' objection, to give Respondents written notice thereof in compliance with the obligations set forth in 29 C.F.R. § 70.26(f).

Also, the Agreement itself is not appended and will be separately maintained and marked “CONFIDENTIAL.” A protective order restricting access to the Agreement will be placed on the outside of the sealed envelope.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Settlement and Final Release Agreement is **APPROVED**; and
2. The complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 13th day of April, 2016, at Covington, Louisiana.

CLEMENT J. KENNINGTON
Administrative Law Judge