



Issue Date: 21 August 2017

Case No.: 2017-FDA-00003

In the Matter of:

KYLE MOWINSKI,
Complainant,

v.

THE GROCERY SHOPPE,
Respondent

**ORDER GRANTING PARTIES' JOINT MOTION TO APPROVE
SETTLEMENT AND DISMISSING COMPLAINT**

This proceeding arises from a complaint of discrimination filed under the FDA Food and Safety Modernization Act, 21 U.S.C. § 399d (2011) ("FSMA") and the procedural regulations found at 29 C.F.R. § 1987.100 et. seq. (2015).

On August 10, 2017, the parties filed a joint Motion to Approve Settlement, along with a copy of the Settlement Agreement and Release (hereinafter the "Settlement Agreement"), pursuant to 29 C.F.R. § 1987.111(c) & (d)(2). The Settlement Agreement resolves all issues raised in the complaint, has been signed by the Complainant and Respondent and is incorporated herein by reference.

I have carefully reviewed the parties' Settlement Agreement and all its provisions. I also note in this regard that Mr. Mowinski is not represented by an attorney; however he was provided the opportunity to consult with one. I have determined that the settlement agreement is fair, adequate, reasonable, and is in the public interest. Therefore, it will be approved pursuant to 29 C.F.R. § 1987.111(d)(2), subject to the below comments.

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). However, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26, giving Respondent the opportunity to challenge any such potential disclosure. The Settlement Agreement itself is not appended and will be separately maintained and marked:

“PREDISCLURE NOTIFICATION MATERIALS”

The parties chose Indiana law to control any dispute between them concerning the Settlement Agreement. (See ¶6.) 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 the parties. For the federal courts and the Secretary of Labor, the law and regulations of the United States control.¹

Accordingly, it is **HEREBY ORDERED** that:

1. The parties’ Joint Motion to Approve Settlement is **GRANTED**;
2. The Settlement Agreement is **APPROVED** and constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1987.111(e);
3. The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope subject to the procedures requiring disclosure under FOIA; and
4. The Complaint of Kyle Mowinski is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JOSEPH E. KANE
Administrative Law Judge

¹ 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).