



Issue Date: 10 April 2019

Case Number: 2018-FDA-00007

In the Matter of:

JULIE AUGESEN,
Complainant

v.

OHLY AMERICAS,
Respondent.

**ORDER GRANTING JOINT MOTION FOR APPROVAL OF SETTLEMENT,
DISMISSAL WITH PREJUDICE, AND CONFIDENTIAL TREATMENT OF
SETTLEMENT AGREEMENT AND ORDER CANCELLING HEARING**

This matter has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges (“OALJ”) pursuant to Section 402 of the FDA Food Safety Modernization Act, P.L. 111-353 (Jan. 4, 2011), codified at the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 399d, its implementing regulations found at 29 C.F.R. Part 1987 and the interim final rule at 79 Fed. Reg. 8619 (Feb. 13, 2014) [herein after “the Act.”].

The parties have signed a Settlement Agreement (“Agreement”) in accordance with 29 C.F.R. § 1978.111(d)(2). The Agreement resolves the controversy arising from the complaint of Complainant against Respondent under the Act. The Settlement Agreement is signed by the Complainant and counsel for Respondent. By a Joint Motion dated March 18, 2019, the parties request an order approving their settlement agreement, dismissing the action with prejudice, and granting their request to keep the terms of their settlement agreement confidential.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under the Act. This Order Approving Settlement is limited to whether the terms of the settlement are a fair, adequate, and reasonable settlement of Complainant’s allegations that Respondent violated the Act. *See generally Kidd v. Sharron Motor Lines, Inc.*, 87-STA-2 (Sec’y July 30, 1987); *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2. As was stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute. *See Aurich v. Consol. Edison Co. of N.Y., Inc.*, Case No. 86-CAA-2, Secretary’s

Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe Co., N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have, therefore, limited my review of this Agreement to determining whether the terms thereof are a fair, adequate, and reasonable settlement of Complainant's allegation that Respondent has violated the Act.

The parties have also requested that the Settlement Agreement be protected from public disclosure to the furthest extent permitted by law. Title 29 C.F.R. §18.85 of the revised rules of practice before the Office of Administrative Law Judges which took effect on June 18, 2015, pertains to privileged, sensitive, or classified material. Under Section 18.85 the administrative law judge, upon the motion of an interested person or on the judge's own, may seal a portion of the record to protect against undue disclosure of privileged, sensitive or classified material. Section 18.85(b)(2) provides that notwithstanding the judge's order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.

It has been held in a number of cases, with respect to confidentiality of settlement agreements, that the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (1988) [herein after "FOIA"], requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which may be made available for public inspection and copying under the FOIA. I construe the parties' request for confidentiality as a request for pre-disclosure notification rights in accordance with 29 C.F.R. §70.26.¹ The Agreement itself is not appended to this Order approving the settlement, and will be kept in a separate envelope and marked "PREDISCLURE NOTIFICATION MATERIALS" in compliance with 29 C.F.R. §70.26. It will also be noted on the envelope that the predisclosure notification will apply to all requests for disclosure of this document. Therefore, should disclosure be requested, the parties will have the opportunity to state their positions in regard to whether disclosure is proper or warranted by law.

I find that both parties were ably represented by counsel in this matter, and that the provisions of the settlement agreement are fair, adequate, reasonable and not contrary to the public interest. Accordingly, I approve the parties' settlement and grant the parties' motion for dismissal of the complaint with prejudice. The parties shall implement the terms of the approved settlement as specifically stated in their agreement. This Order shall have the same force and effect as one made after a full hearing on the merits.

¹The parties are afforded the right to request that information be treated as confidential business information. See 29 C.F.R. §70.26 (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, an unredacted copy of the Settlement Agreement in this matter will be placed in an envelope marked "PREDISCLURE NOTIFICATION MATERIALS." Consequently, before any information in this unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2016).

ORDER

Wherefore, it is ordered that:

1. The Settlement Agreement is **APPROVED**;
2. The Complaint is **DISMISSED WITH PREJUDICE**;
3. The Settlement Agreement is designated as confidential business information, under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder, for purposes of a FOIA request. Predisclosure notification will also be provided to the parties in relation to other requests for disclosure as well; and
4. The hearing scheduled for June 3, 2019 in St. Paul, Minnesota is **CANCELLED**.

DREW A. SWANK
Administrative Law Judge