



Issue Date: 20 March 2020

CASE NO.: 2019-FDA-00011

OWCP NO.: 5-2780-18-086

In the Matter of:

TROY AHRENS,
Complainant,

v.

MARCO'S PIZZA.,
Respondent.

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

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. § 1987.111(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 filed March 11, 2020, 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.

I 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 Settlement Agreement pertaining to Complainant’s STAA claim, Case No. 2017-STAA-00013. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

After consideration of the terms and conditions of the Settlement Agreement, I find that the Settlement Agreement does not contain any provisions that are contrary to law or against

public policy. Both the Complainant and the Respondent have been ably represented by counsel, and I find it reasonable to presume that the terms of the Settlement Agreement adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case. Accordingly, based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby APPROVED pursuant to 29 C.F.R. § 1987.111(d)(2), subject to the below comments.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in this case, including the Settlement Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552 *et seq.* FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). I recognize, however, that the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. § 70.2(j), as well as personal information relating to the Complainant. To protect the parties from improper disclosure of this confidential information to the furthest extent permitted by law, I will construe the parties' request as an assertion of pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26.

With regard to the resulting confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, the Settlement Agreement may nonetheless be subject to disclosure as a responsive document to a FOIA request. 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.

Having found 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, 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.

ORDER

Wherefore, it is ordered that:

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

- (1) The parties' Joint Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be deemed confidential commercial information, subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Troy Ahrens is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.