



Issue Date: 16 June 2010

Case No.: 2010-SOX-00008

In the Matter of:

JOHN LINDEN,

Complainant,

v.

KOWABUNGA, INC.

n/k/a

INUVO, INC.,

Respondent.

BEFORE: STEPHEN L. PURCELL
Acting Chief Administrative Law Judge

Appearances:

For the Complainant:

Chris A. Barker, Esquire
Barker, Rodems & Cook, P.A.
Tampa, Florida

Nicholas Taldone, Esquire
Clearwater, Florida

For the Respondent:

John D. Mullen, Esquire
Olivia Z. Weisman, Esquire
Phelps Dunbar LLP
Tampa, Florida

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CASE WITH PREJUDICE**

This case arose when the Complainant, John Linden, filed a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX or the

Act).¹ On June 15, 2010, the parties filed a fully executed settlement agreement dated June 14, 2010, for review and approval. The agreement includes a provision certifying that it represents the sole and entire agreement between the parties with respect to the subject matter of the agreement.

The parties may settle a case arising under SOX if the participating parties agree to a settlement, and they provide the presiding administrative law judge with a copy of the settlement for review and approval.²

Upon review of the agreement, I find that it is fair, adequate, and reasonable, and in the public interest.

The agreement provides that “[a]ll terms of the settlement, including the amount paid, are stipulated to be confidential pursuant to Florida law....” I note, however, that the parties’ submissions during the course of a Department of Labor SOX hearing, including the instant settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).³ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.⁴ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁵

Finally, I construe the provision of the agreement stating that it “shall be interpreted and enforced in accordance with Florida law” as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States.⁶

Accordingly, with the reservations noted above, I **APPROVE** the agreement and **DISMISS** the complaint with prejudice. Pursuant to 29 C.F.R. § 1980.111(e), this order constitutes the final order of the Secretary of Labor.

¹ 18 U.S.C.A. § 1514A (West 2006). The regulations implementing SOX are found at 29 C.F.R. Part 1980 (2009).

² 29 C.F.R. § 1980.111(d)(2).

³ 5 U.S.C.A. § 552 (West 2007).

⁴ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

⁵ 29 C.F.R. Part 70 (2009).

⁶ *Phillips v. Citizens’ Ass’n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec’y Nov. 4, 1991).

SO ORDERED.

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STEPHEN L. PURCELL

Acting Chief Administrative Law Judge