



Issue Date: 12 April 2013

CASE NO.: 2011-SOX-00048

In the Matter of:

ROD CUSHING,
Complainant,

v.

RBC WEALTH MANAGEMENT,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT

This case arises out of a complaint of retaliation filed pursuant to the employee protection provisions of The Sarbanes-Oxley Act. The Complainant, Rod Cushing filed a complaint of discrimination with the Department of Labor against respondent, RBC Wealth Management. On April 10, 2013, the parties submitted a pleading styled "Joint Motion to Approve Confidential Settlement and Dismiss Proceeding with Prejudice and Confidential Treatment of Settlement Agreement," together with a document entitled "Confidential Settlement Agreement and Release" which resolve all issues raised in the Complaint, for review and approval by the undersigned administrative law judge. The aforesaid Motion and Settlement Agreement are incorporated herein by reference.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Initially, I note that the parties are represented by counsel.

Section 8 of the settlement agreement provides that both parties will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions. Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the 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 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

Paragraph 13 of the settlement agreement asserts that it is to be construed under the laws of the State of Utah and that any claim pursuant to the agreement must be brought in arbitration before the Financial Industry Regulatory Authority in New York. Since this matter arises under federal law, the undersigned does not approve these provisions of the agreement except to such extent as they may be consistent with federal law.

After careful consideration of the settlement agreement, I find that none of the terms or conditions is unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Mr. Hildebrand. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the settlement agreement.

Accordingly, this case is **DISMISSED** with prejudice.

Russell D. Pulver
Administrative Law Judge

San Francisco, California