

**U.S. Department of Labor**

Office of Administrative Law Judges  
36 E. 7th St., Suite 2525  
Cincinnati, Ohio 45202

(513) 684-3252  
(513) 684-6108 (FAX)



**Issue Date: 18 April 2012**

OALJ Case No.: 2012-SOX-7  
OSHA Case No.: 5-2700-11-024

*In the Matter of:*  
ARTHUR NEEF,  
Complainant,

v.

COMERICA BANK,  
Respondent.

Appearances:

Maureen Rouse-Ayoub, Esq.  
Bodman, PLC  
Troy, Michigan  
for the Respondent

Allan Neef, Esq.  
St. Clair, Michigan  
for the Complainant

Before: Peter B. Silvain, Jr.  
Administrative Law Judge

**ORDER ALLOWING WITHDRAWAL OF APPEAL**  
**DUE TO APPROVAL OF SETTLEMENT**

*Factual and Legal Background*

This proceeding arises from a claim of whistleblower protection under Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act (“SOX”), 18 U.S.C. § 1514A. The statute and implementing regulations at 29 CFR Part 1980 (2011) prohibit retaliatory or discriminatory actions by publicly-traded companies against their employees who provide information to their employers, a federal agency, or Congress, alleging violation of any Federal law relating to fraud against shareholders. On December 23, 2011, the Complainant, Arthur Neef, requested a hearing by the Office of Administrative Law Judges appealing a November 22, 2011 finding by the Occupational Safety and Health Administration (“OSHA”). OSHA had dismissed Mr. Neef’s Complaint, as it had determined that the evidence did not support that the Respondent Comerica Bank had violated SOX when it terminated Mr. Neef’s employment.

On January 5, 2012, this case was assigned to the undersigned Administrative Law Judge for hearing and decision. A Scheduling Notice was issued on January 25, 2012 and preliminary telephone conference was held with the parties on March 21, 2012.

On March 28, 2012, the parties communicated to the undersigned that they had “resolved this matter and hereby withdraw, with prejudice to re-filing, in any forum: (1) Arthur Neef’s objections to finding of OSHA Administrator in Comerica/Neef/5-2700-11-024 and request for rehearing; and (2) Comerica Bank’s response and objection to Arthur Neef’s objections to the findings of the OSHA Administrator and Comerica Bank’s request for an award of attorney fees.”<sup>1</sup> However, the basis of this request for withdrawal was not provided along with the correspondence. After a request from the undersigned’s office, on April 5, 2012, Counsel for the Respondent provided a copy of an executed “Settlement Agreement and Release.”

This Settlement Agreement and Release provides in pertinent part that:

- Plaintiff [Arthur Neef] also filed a complaint with the U.S. Department of Labor, Case No. 2012-SOX-7, alleging violation of the Sarbanes Oxley Act (“SOX”). Plaintiff’s SOX Complaint was dismissed on November 22, 2011. Plaintiff subsequently filed an appeal of the dismissal and Comerica filed a request for attorney’s fees and cost. The appeal and request for attorney fees and cost have been assigned Case No. 5-2700-11-024.<sup>2</sup>
- In consideration of the following actions, the parties, Defendants and Plaintiff, by and through their respective attorneys, Allan Neef and Bodman, PLC, agree that the litigation is concluded, and the parties and their attorneys will not pursue any further appeals or an award of sanctions or any other proceedings in this matter in any forum.
- Defendants will not pursue sanctions against Arthur Neef or his attorney, Allan Neef.
- Defendant Comerica will withdraw with prejudice to refiling its request for attorney fees and cost in Case No. 5-2700-11-024.
- Plaintiff and his attorney will not pursue any causes of action against any of the Defendants.
- Plaintiff will withdraw his appeal in Case No. 5-2700-11-024.<sup>3</sup>

#### Discussion

Sections 1980.111(c) and (d)(2) of title 29, C.F.R. govern withdrawal of SOX Complaints pursuant to settlement and they provide in relevant part:

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the [Administrative Review] Board. The judge or the Board, as the case may be, will

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<sup>1</sup> As the parties March 28, 2012, notice that they are withdrawing, with prejudice, all claims in this matter is statutorily ineffective absent approval; the undersigned will construe it as a Motion requesting said approval.

<sup>2</sup> The parties have interchangeably used the OSHA Case number “5-2700-11-024” with the number designated by the Office of Administrative Law Judges for the Complainant’s appeal, which is “2012-SOX-7”. For the purposes of this Order, and the approval of the submitted settlement, these case numbers will be considered to encompass both the Complaint’s appeal of the OSHA dismissal of his SOX Complaint, as well as the filing by the Respondent seeking attorney’s fees and costs.

<sup>3</sup> The complete terms of the “Settlement Agreement and Release” are incorporated to this Order by reference and a copy has been attached hereto.

determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

...

(d)(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

Having noted that both parties had counsel intimately familiar with the status and merits of the claims, and that the executed Settlement Agreement and Release provides for the mutual withdrawal by both parties of all issues, the undersigned approves the Settlement Agreement as submitted. Further, the undersigned finds this settlement to be an adequate basis for withdrawal of the Complainant's appeal of OSHA's dismissal of his complaint, and the Respondent's filing for attorney's fees and costs.

### **ORDER**

**IT IS HEREBY ORDERED**, that Complainant's and Respondent's Motions to withdraw, with prejudice to re-file, all claims encompassed by OSHA Case number 5-2700-11-024 and Office of Administrative Law Judges Case number 2012-SOX-7 be, and hereby are, **GRANTED**, and that these cases can be, and hereby are, **DISMISSED WITH PREJUDICE**.

**A**

Peter B. Silvain, Jr.  
Administrative Law Judge