U.S. Department of Labor

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Issue Date: 15 October 2012

In the Matter of: **Case No.: 2012-SOX-00020**

GREGORY VONDERHEIDE,
Complainant,

v.

EQUITY LIFESTYLE PROPERTIES, INC.,
(MHC OPERATING LIMITED PARTNERS),
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMLAINT WITH PREJUDICE

This proceeding arises from a complaint of discrimination filed by Gregory Vonderheide ("Complainant") against Equity Lifestyle Properties, Inc. ("Respondent") under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of The Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C.A. § 1514A (West 2004) and the procedural regulations found at 29 C.F.R. Part 1980 (2004). The formal hearing was set for October 16, 2012, in Tampa, Florida, and was canceled when the parties informed my office that they had reached a settlement. On September 25, 2012, Complainant filed a *Notice of Settlement and Voluntary Dismissal with Prejudice*. On October 9, 2012, the parties filed a copy of their settlement agreement ("Settlement Agreement").

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that Respondent violated the SOX whistleblower provisions. My authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, insofar as I approve the Settlement Agreement, my approval only extends to the terms of the Settlement Agreement pertaining to Vonderheide's current SOX case, 2012-SOX-00020.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § *et seq*. 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., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should a disclosure be requested, the Department of Labor will notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001).

In paragraph 6 of the Settlement Agreement, Complainant agreed to "no future employment and references." I find the employment waiver to be fair and reasonable based on the facts and circumstances in this case. The waiver is limited only to employment with Respondent, the Complainant has received adequate consideration for this waiver, and he was represented by counsel.

In paragraph 12, Complainant agreed to waive his right to assist other individuals or entities in bringing claims against Respondent. I approve this provision only to the extent that it is applicable to the subject matter of Complainant's particular allegations set forth in his claim.[1]

Considering all the circumstances in this case, I find that the Settlement Agreement is fair, adequate, reasonable, and does not contravene the public interest. Accordingly, I **APPROVE** the agreement and **DISMISS** the petition for review with prejudice.

Digitally signed by CHRISTINE KIRBY
DN: CN=CHRISTINE KIRBY,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Washington, S=DC, C=US
Location: Washington DC

CHRISTINE L. KIRBY
Administrative Law Judge

Washington, D.C.

[1] *See* 18 U.S.C.A. § 1514A(a)(2) (prohibiting discrimination against an employee who testifies, participates in, or assists in a proceeding relating to an alleged violation of section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of the Federal law relation to fraud against shareholders). *See also Ruud v. Westinghouse Hanford Co.*, 88-ERA-33 @ n12 (ARB Nov. 10, 1997) (finding that Complainant's waiver of his right to make additional remarks or comments concerning employment at Respondent is not saved from being an unlawful gag provision by an exception permitting Complainant to respond to lawful subpoenas since not all regulatory agencies possess the authority to issue subpoenas).