

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 08 January 2015

CASE NO.: 2014-SOX-00050

In the Matter of:

GARY BISHOP,
Complainant,

v.

MORGAN STANLEY SMITH BARNEY, LLC.,
CITIGROUP GLOBAL MARKETS, INC.,
Respondents.

ORDER APPROVING SETTLEMENT

This proceeding arises from a complaint filed by Gary Bishop (“Complainant”) against Morgan Stanley Smith Barney, LLC., and Citigroup Global Markets, Inc., (“Respondents”) alleging a violation of Section 806 of the Corporate And Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (“SOX”). The procedural regulations for handling whistleblower complaints under SOX are found at 29 C.F.R. Part 1980. On June 25, 2014, Complainant filed a SOX complaint with the Occupational Safety and Health Administration (“OSHA”), which it denied on August 27, 2014. Complainant requested a hearing on September 26, 2014, which initiated the current proceeding before the Office of Administrative Law Judges (“OALJ”). The parties are all represented by counsel.

On December 30, 2014, the parties submitted a signed Settlement Agreement and Release of Claims (“Settlement Agreement”) that resolved all issues in this case. *See* 29 C.F.R. §§ 1980.109, 1980.111(d)(2). The Settlement Agreement also included the resolution of other matters under a multitude of laws other than SOX. My authority over settlement agreements is limited to the statute and parties before me and I have, therefore, restricted my review of the Settlement Agreement to ascertaining whether the terms fairly, adequately, and reasonably settle this SOX case. With that understanding, there are a number of provisions in the Settlement Agreement which extend far beyond my jurisdiction and are addressed below.

Specifically, there is a provision wherein Claimant generally releases all claims against the Respondents, and also releases all claims against a long string of people and businesses, including affiliates of Respondents, related entities, and parent and subsidiary corporations, as well as shareholders, employees, insurers, future officers, and attorneys and agents, as well as successors, heirs and assigns, to name just a few. The provision releasing Respondents begins on

page 4 and ends on page 6 of the Settlement Agreement. The provision is extensive and it extends beyond the parties to this Settlement Agreement, over which I have no jurisdiction. I interpret the waiver provision narrowly and find it waives rights against the named parties for issues related to this SOX claim only. I interpret the waiver to be limited to Complainant's right to pursue claims or causes of action arising out of the conduct at issue here and occurring before the date of the Settlement Agreement.

Similarly, the release provision purports to waive all claims known or unknown, including any claims that might arise after the Settlement Agreement. The claims are waived under specific statutes, as well as unknown federal, state, local and international statutes and laws. I also interpret this provision narrowly, and find that the waiver relates only to the claims in the SOX case currently pending before me, and not to any other matters under any other federal, state, local or international laws, whether known or unknown.

The Settlement Agreement also includes a confidentiality provision, which pertains to the parties to agreement. However, the OALJ and the files it maintains, including this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act ("FOIA"), unless an exemption applies. 5 U.S.C.A. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013); *Swint v. Net Jets Aviation, Inc.*, ARB No. 03-124, slip op. at 2 (ARB Nov. 25, 2003). The Department of Labor has regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013); *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-00007, slip op. at 2 (ARB Jan. 31, 2011); *Swint, supra*, ARB No. 03-124, slip op. at 2. In addition, I interpret the confidentiality provisions to not preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law. To interpret the provision otherwise would violate public policy. *Johnson, supra*, ARB No. 13-014, 13-046, slip op. at 2.

As construed, and after reviewing the terms of the Settlement Agreement, I find that the terms and conditions are fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. The Settlement Agreement is incorporated by reference into this Order, and, as discussed above, is hereby approved. This matter is dismissed with prejudice.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge

San Francisco, California