

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 21 October 2014

ALJ NO.: 2014-SOX-00021

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THOMAS DONLON,  
*Complainant,*

v.

BLACKROCK, INC.,  
*Respondent.*

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**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint of discrimination filed by Thomas Donlon (“Complainant”) against Black Rock, 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. § 1514A and the procedural regulations found at 29 C.F.R. Part 1980. The formal hearing was set for September 15, 2014 in New York City. The parties appeared and indicated they had reached a settlement in principle and needed additional time to prepare the documents. On October 20, 2014, the parties filed a document entitled “Settlement and General Release” (hereinafter “Settlement Agreement”), as well as a Joint Voluntary Stipulation of Dismissal With Prejudice.<sup>1</sup>

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<sup>1</sup> The regulations implementing SOX entitled “Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002” establish procedures for resolving complaints under the statute. Section 29 C.F.R. § 1980.111(c) provides:

At any time before the Assistant Secretary’s findings and/or order become final, a party may withdraw its objections to the Assistant Secretary’s findings and/or order by filing a written withdrawal with the ALJ . . . . The ALJ . . . will determine whether to approve the withdrawal of the objections . . . . If the ALJ approves a request to withdraw objections to the Assistant Secretary’s findings or order, and there are no other pending objections, the Assistant Secretary’s findings and order will become the final order of the Secretary . . . . If objections . . . are

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the SOX whistleblower provisions. I find that the Settlement Agreement generally complies with the standard required and I will approve it pursuant to 29 C.F.R. § 1980.111(d)(2).

The parties intend the settlement agreement to be confidential. 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. § 552 *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 disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties choose New York law to control any dispute between them concerning the Agreement. As I construe this provision, it is not intended to and does not limit the authority of any federal court or the Secretary of Labor. It is an agreement between the parties, limited in its application to themselves. For the federal courts and the Secretary, the law and regulations of the United States control.<sup>2</sup>

In reviewing the Settlement Agreement, I also note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Agreement pertaining to the Complainant's current SOX case, 2014-SOX-00021. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

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withdrawn because of a settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

29 C.F.R. 1980.111(d)(2) titled "Adjudicatory settlements" provides:

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 ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

<sup>2</sup> See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

Accordingly, it is **ORDERED** that:

- (1) The Settlement Agreement is **APPROVED**;
- (2) The Settlement Agreement shall be designated as confidential subject to the procedures requiring disclosure under FOIA;
- (3) The Complaint of Thomas Donlon is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

COLLEEN A. GERAGHTY  
Administrative Law Judge

Boston, MA