



Issue Date: 28 October 2014

CASE NO.: 2014-SOX-00039

In the Matter of:

**LEE WEBSTER,
Complainant,**

v.

**INTERSECTIONS, INC.,
Respondent.**

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

The above-captioned matter arises under the employee protection provisions 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”) (with pertinent regulations appearing at Parts 18 and 1980 of Title 29 of the Code of Federal Regulations). A scheduled hearing (to be held from Thursday, October 16, 2014, to Friday, October 17, 2014 in Washington, D.C.) was canceled upon receipt of advice from the parties that the parties have reached a settlement, as discussed below.

On September 22, 2014, I issued an Order Canceling Hearing and Permitting Filing of Settlement Documents Under Seal. In that regard, on September 19, 2014, the parties filed a Joint Motion to File Document Under Seal, in which they advise that they had reached a settlement but jointly requested that this tribunal and the Department of Labor “treat the Agreement, its terms and conditions, and any related filing with the maximum confidentiality and exception from public disclosure that is permitted by law.” In permitting the parties to file the settlement documents under seal, I cautioned:

In doing so, the parties acknowledge that their submissions, as part of the record, may be subject to the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. *See generally Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). Further, the parties have requested prediscovery notification rights under 29 C.F.R. §70.26. Under that provision, parties may designate material as involving confidential business information in which case it will be maintained in a separate folder and before any information is disclosed pursuant to a FOIA request, the parties will be notified

and given the opportunity to file objections in accordance with 29 C.F.R. §70.26. *See also* 29 C.F.R. § 18.56 (Restricted Access); 29 C.F.R. §§ 18.15, 18.46 (Protective Order).

The parties submitted a Joint Motion to Approve Settlement and Release of All Claims Agreement on October 21, 2014, together with a Confidential Agreement and General Release (hereafter “Settlement Agreement”) filed under seal. As the parties recognize, a settlement under SOX must be presented to the undersigned administrative law judge for approval, if it is reached while the case is pending before the Office of Administrative Law Judges. *See* 29 C.F.R. §1980.111(d). *Compare Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec’y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate and reasonable) *with Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(A)(ii), FRCP, and contrasting ERA cases.)

Confidentiality Clause. The Settlement Agreement contains a confidentiality clause. However, as noted above, records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. *See generally Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997). As requested by the parties, the Settlement Agreement and any attachments shall be maintained in a separate folder and provided with the maximum confidentiality and exception from public disclosure that is permitted by law, in accordance with 29 C.F.R. §§ 18.15, 18.46, and 18.56, and the parties shall be entitled to predisclosure notification in accordance with 29 C.F.R. §70.26.

Other Causes of Action. To the extent that the Settlement Agreement relates to matters under laws other than the Sarbanes-Oxley Act, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant’s allegations that the Respondent violated SOX. *See Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec’y Nov. 2, 1987). In reviewing the Settlement Agreement, I have not determined, or taken into consideration, the tax consequences of any payments made in accordance with the Settlement Agreement.

Medicare Secondary Payer Act. Under the Medicare Secondary Payer Act (“MSP”), 42 U.S.C. §1395y(b), the Center for Medicare and Medicaid Services (“CMS”) may hold employers and carriers responsible for future Medicare payments if medical expenses are compromised without approval of the settlement by CMS. *See* 42 C.F.R. § 411.46. The parties indicate that they have considered the Medicare issue, as set forth in the Settlement Agreement. In approving this Settlement Agreement, I have not determined whether Medicare’s interest (if any) in this matter has been adequately protected under the provisions of the MSP.

Having reviewed the terms of the Settlement Agreement, which are incorporated by reference herein, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. Accordingly,

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement be, and hereby is, **APPROVED**, and the parties shall comply with its terms to the extent that they have not already done so; and

IT IS FURTHER ORDERED that this action be, and hereby is **DISMISSED WITH PREJUDICE**.

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.