



Issue Date: 13 July 2017

Case No.: 2016-SOX-00006

In the Matter of:

MIKE HAMILTON,
Complainant,

v.

PRICEWATERHOUSECOOPERS LLP,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND
GRANTING RESPONDENT'S UNOPPOSED MOTION TO SEAL**

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980. Twenty-nine C.F.R. § 1980.107(a) provides that all proceedings must be held in a manner consistent with the rules of practice and procedure set forth at 29 C.F.R. Part 18, Subpart A.

In a June 14, 2017 *Supplemental Order Concluding Mediation*, I directed the parties in the above-captioned case to submit a written settlement agreement and any attendant motions within fourteen days. On June 19, 2017, I received (1) a *Motion for Approval of Settlement Agreement* (hereinafter "*Joint Motion*") signed by counsel for Complainant and counsel for Respondent; (2) a proposed *Settlement Agreement, General Release and Waiver* (hereinafter "*Settlement Agreement*") signed by Complainant and a representative for Respondent; and (3) *Respondent's Unopposed Motion to Seal* and an accompanying memorandum of law (hereinafter "*Motion to Seal*").

In the *Joint Motion*, the parties request that I (1) approve the *Settlement Agreement*; and (2) dismiss this matter in its entirety with prejudice and without costs to either party. The implementing regulation at 29 C.F.R. § 1980.111(d)(2) provides, in pertinent part, that "[a]t 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.... A copy of the settlement will be filed with the Administrative Law Judge...."

Having reviewed the *Settlement Agreement* and the administrative record, I find that the terms of the *Settlement Agreement* are fair, adequate, reasonable, and not contrary to public policy, and therefore, I approve the settlement. To the extent that the *Settlement Agreement*

contains provisions that may relate to actions by Complainant or Respondent under any other statutes except SOX, this Order makes no determination regarding the propriety of such provisions. My authority over settlement agreements is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges as set forth in the applicable statute. Accordingly, my approval of the settlement extends only to the terms of the Settlement Agreement pertaining to Complainant's SOX case.

In the *Motion to Seal*, Respondent, through counsel, requests that I designate the *Settlement Agreement* as confidential commercial information pursuant to 29 C.F.R. § 70.26, and place the *Settlement Agreement* under seal. The regulation at 29 C.F.R. § 18.85(b)(1) provides that “[o]n motion of any interested person...the judge may order any material that is in the record to be sealed from public access.” Upon granting such a motion, the judge’s order “must state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of public access.” 29 C.F.R. § 18.85(b)(2).

I find that the details of *Settlement Agreement* constitute confidential commercial information pursuant to 29 C.F.R. § 70.26.¹ Further, I find good cause to grant the Respondent’s unopposed² *Motion to Seal*, based on Respondent’s argument that it owes a duty of confidentiality to its clients and that the disclosure of the *Settlement Agreement* could damage its client relationships.³ See generally *Thomas v. Pulte Homes, Inc.*, 2005-SOX-00009 (Aug. 5, 2009). The *Settlement Agreement* will be maintained in a “clearly marked, separate part of the record” in compliance with the requirements at 20 C.F.R. § 18.85(b)(2).

¹ Notwithstanding this order, the *Settlement Agreement* will become part of the record of this case and will be subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a). If a FOIA request is made for the *Settlement Agreement*, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notifications rights under 29 C.F.R. § 70.26.

“Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).” *Coffman v. Alyeska Pipeline Serv. Co & Artic Slope Inspection Serv.*, ARB No. 96-141, 1996-TSC-00005, slip op. at 2 (ARB June 24, 1996).

² Respondent states in its *Motion to Seal* that it has conferred with Complainant’s counsel, and Complainant does not oppose the motion. Complainant has not made any filings to the contrary.

³ The record also establishes that Complainant owes a similar duty by virtue of his former position as a Principal of Respondent.

ORDER

Accordingly, it is hereby **ORDERED** that:

1. The *Settlement Agreement* is **APPROVED**;
2. The Complainant's complaints are **DISMISSED WITH PREJUDICE** without costs to either party; and
3. The *Settlement Agreement* is **CONFIDENTIAL** and will be handled in a manner consistent with the restricted access provisions of 29 C.F.R. § 18.85(b) and the pre-disclosure notice requirements of 29 C.F.R. § 70.26. The *Settlement Agreement* is designated "confidential commercial information."

LARRY S. MERCK
Administrative Law Judge

Washington, D.C.