



Issue Date: 23 August 2017

Case No.: 2017-SOX-00003

In the Matter of:

MARY G. BARNES,
Complainant,

v.

TRELIANT RISK ADVISORS, LLC,
Respondent.

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

This proceeding arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“SOX”), as amended, 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980. By Order, issued on January 31, 2017, the case was scheduled for a hearing on September 5, 2017, in Washington, D.C.

On August 8, 2017, Complainant’s counsel filed a Settlement Agreement (“Settlement”) with the court signed by Complainant and a representative of the Respondent. The Settlement resolves the controversy arising from Complainant’s claim against Respondent.¹ This Settlement is signed by Complainant and a representative of the Respondent. The Settlement provides that Complainant will release Respondent from claims arising under SOX, as well as various other laws. However, this order is limited to whether the terms of the Settlement are a fair, adequate, and reasonable settlement of Complainant’s allegations that Respondent violated SOX.² The Settlement provides that Respondent shall make a payment to Complainant of the amount agreed upon, and that Complainant will release any and all claims arising out of her employment with

¹ Proceedings before the OALJ may be terminated on the basis of a settlement if the administrative law judge (ALJ) approves the settlement. 20 C.F.R. § 1980.111(d)(2). The ALJ reviews the terms of the settlement to ensure that they are fair, adequate, and reasonable. *See, e.g., Gonzales v. J.C. Penney Corp., Inc.*, ARB No. 10-148, ALJ No. 2010-SOX-045 (ARB Sept. 28, 2012).

² As stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987), “the Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute.” I have therefore limited my review of the Settlement Agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant’s allegation that the Respondent had violated SOX.

Respondent, and specifically that the present action shall be dismissed in full with prejudice pending OALJ's approval of the Settlement.

The parties intend the Settlement to be confidential. With regard to confidentiality of the Settlement, the parties are advised that notwithstanding the confidential nature of the Settlement, all of their filings, including the Settlement, 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, 2997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

Having carefully reviewed the Settlement Agreement with regard to the Complainant's complaint under SOX, I make the following findings:

1. The Settlement Agreement appears to be fair and reasonable on its face and to effectuate the purposes and policies of SOX, and not contrary to public policy. Therefore, I approve the Settlement Agreement.
2. Upon my approval, the parties shall implement the terms of the Settlement Agreement as stated therein.
3. The Complainant is deemed to have waived any further proceedings before the U.S. Department of Labor regarding the matters which are the subject of the Settlement Agreement.
4. This Order shall have the same force and effect as one made after a full hearing on the merits.
5. My authority only extends to approval of the settlement of Complainant's claim against Respondent under SOX.
6. Finally, the Settlement Agreement provides that the Complainant shall keep the terms of the settlement confidential.³ I note that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to FOIA. FOIA requires Federal agencies to disclose requested records unless they are exempt

³ Settlement Agreement, paragraph 9.

from disclosure under the Act.⁴ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁵

ORDER

Based on the foregoing, and in accordance with the terms of the Settlement Agreement, **IT IS HEREBY ORDERED** that:

1. The Settlement Agreement is **APPROVED**.
2. The underlying SOX complaint is **DISMISSED** with prejudice.
3. The formal hearing scheduled to commence on September 5, 2017, in Washington, D.C. is **CANCELLED**.

LARRY S. MERCK
Administrative Law Judge

⁴ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005-006..slip op@2 (ARB June 24, 1996).

⁵ 29 C.F.R. § 70 *et seq.* 2017.