



Issue Date: 13 February 2019

Case No.: 2018-SOX-00029

In the Matter of:

HEATHER SCOTT,

Complainant,

v.

WELLS FARGO BANK,

Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT
AND ORDER OF DISMISSAL**

This case 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, as amended (“SOX”), 18 U.S.C.A. § 1514A, and its implementing regulations found at 29 CFR Part 1980. On February 6, 2019, the parties submitted a Settlement Application together with a Confidential Settlement Agreement and General Release (submitted as Exhibit A). Upon review of the settlement agreement, I find that its terms are fair, adequate, and reasonable, and do not contravene the public interest.

The settlement appears to be a global settlement purporting to dispose of claims in addition to the claim brought under the SOX. My authority to approve the settlement agreement is limited to matters that are before me; that is, to approve the settlement agreement only insofar as it resolves Ms. Scott’s complaint under the SOX. My approval should not be construed as approving the resolution of any claims brought under any other federal statute or under state law. This reservation is not intended to address the effectiveness of the settlement with respect to other claims, and the parties are not precluded from raising the settlement agreement in the course of other proceedings, if any arise.

I construe paragraph 17, stating that “[t]he laws of the State of North Carolina shall govern the validity, construction, and enforcement of this Agreement,” as not limiting the authority of the Secretary of Labor or any Federal court, which shall be governed in all respects by the laws and regulations of the United States.

The parties agree that the settlement agreement should be kept confidential, and its footer states that it is “Covered by Exemption 4 of FOIA.” The Freedom of Information Act, 5 U.S.C.

§ 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act. However, consistent with 29 C.F.R. § 70.26,¹ the parties will be provided a pre-disclosure notification giving them the opportunity to challenge any potential disclosure of the settlement agreement. In the event the settlement agreement is disclosed pursuant to FOIA, such disclosure is not a violation of the agreement and will not result in a violation of the agreement.

The parties agree that the complaint will be dismissed and this matter closed.

Accordingly, with the reservations noted above and limiting my approval to the complaints brought under SOX, **IT IS ORDERED:**

1. The settlement agreement between the parties submitted on February 6, 2019, is **APPROVED**;
2. The parties are **DIRECTED** to act in accordance with its terms;
3. The complaint filed by Complainant Heather Scott is **DISMISSED**, and this matter is closed.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, VA

¹ Exemption 4 of FOIA protects “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The regulation at 29 C.F.R. § 70.26(b) provides: “A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4.” Courts examining Exemption 4 have held that the term “person” includes corporations (*see FlightSafety Servs. v. Dep’t of Labor*, 326 F.3d 607, 611 (5th Cir. 2003) (per curiam) (the term “person” includes business establishments)), and that records are commercial so long as the submitter has a “commercial interest” in them (*see Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).