



Issue Date: 13 November 2019

Case No.: 2018-SOX-00044

In the Matter of:

ELIZABETH WEISS
Complainant

v.

RCI HOSPITALITY HOLDINGS, INC.
Respondent

**DECISION AND ORDER GRANTING AGREED-TO MOTION TO WITHDRAW
OBJECTIONS, APPROVING NEGOTIATED SETTLEMENT AND RELEASE AND
DISMISSING WITH PREJUDICE**

The above-captioned matter arises from a complaint filed by Elizabeth Weiss (“Complainant”) against RCI Hospitality Holdings, Inc. (“Respondent”) under Section 806 (*i.e.*, the employee protection provision) of the Sarbanes-Oxley Act of 2002, as amended (“SOX,” “the Act,” or “Section 806”), 18 U.S.C. § 1514A, and its implementing regulations found at 29 C.F.R. Part 1980. Section 806 provides “whistleblower” protection to employees of publicly traded companies against discrimination by employers in the terms and conditions of employment because of certain “protected activity” by the employee. The Department of Labor’s “Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges,” (“the Rules”) set out at 29 C.F.R. Part 18, also apply.

On November 4, 2019, Complainant, through her counsel, submitted the following: 1) an “Agreed To Motion To Withdraw Objections And For Approval Of Negotiated Settlement Agreement And Release” and 2) a “Negotiated Settlement Agreement And Release” (“Settlement Agreement”). To the extent that the Settlement Agreement contains provisions that may relate to actions by Complainant or Respondent under any other statutes than SOX, this Order makes no determination regarding the propriety of such provisions. The authority of the undersigned 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. Therefore, this Order only addresses the terms of the Settlement Agreement pertaining to Complainant’s SOX complaint.

Having carefully reviewed the Settlement Agreement under SOX, the following findings are made:

1. The Settlement Agreement, on its face, appears to be fair and reasonable and to effectuate the purposes and policies of SOX;
2. 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;
3. This Order will have the same force and effect as one made after a full hearing on the merits; and,
4. 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.* Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

ORDER

IT IS HEREBY ORDERED that the Settlement Agreement is **APPROVED**. **IT IS FURTHER ORDERED** that the above-captioned SOX complaint is **DISMISSED WITH PREJUDICE**. The hearing scheduled for January 28-29, 2020 is **CANCELED**.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1980.109(e) and 1980.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).