



Issue Date: 15 May 2019

Case No.: 2019-SOX-00001

In the Matter of:

WAYNE GOLDSTEIN
Complainants

v.

BROWN BROTHERS HARRIMAN & CO.
Respondent

ORDER APPROVING SETTLEMENT AND DISMISSING CLAIM

This matter arises out of a complaint of discrimination filed pursuant to 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”). Implementing regulations are at 29 C.F.R. Part 1980. By Order dated April 16, 2019, this Tribunal scheduled a hearing for May 20-24, 2019, in Cherry Hill, New Jersey.

On May 10, 2019, the parties submitted a Joint Motion to Cancel Hearing and Pre-Hearing Deadlines, Approve Settlement Agreement, Dismiss Claim, and File Document Under Seal. The parties reported that the case had settled and attached a fully executed copy of the parties’ Confidential Settlement Agreement and Release of Claims. Accordingly, the parties request that the Tribunal approve the Settlement Agreement, dismiss the case, and file the unredacted version of the Settlement Agreement under seal.

This Tribunal finds that the proposed Settlement Agreement is proper, and approves it with several caveats. First, language in this agreement purports to settle, release, or otherwise address claims or potential claims that far exceed the statute involved in this action. *See* Paragraphs 2, 3. The Tribunal limits its review to the asserted SOX whistleblower claims only, as anything beyond that limitation exceeds this Tribunal’s jurisdiction.

Second, the Settlement Agreement provides that it shall be governed by the laws of the State of New York. *See* Paragraph 15. Per 49 U.S.C. § 42121(b)(6) (as incorporated by 18 U.S.C. § 1514A(b)(2)), the appropriate United States District Court shall have jurisdiction of any civil enforcement action related to this Order. To the extent Paragraph 15 is inconsistent with the statute, that paragraph is void and unenforceable.

Third, this Tribunal ORDERS paragraph 1 (including subparagraphs (a) through (b)) of the Settlement Agreement to be sealed. The Tribunal has previously informed the parties and now restates that the records of this Tribunal are subject to the Freedom of Information Act (“FOIA”) and are generally available to the public.

This Office will place the Settlement Agreement in a sealed envelope within the public file. A copy of this Order will be affixed to this envelope. A redacted copy of the Settlement Agreement will be placed in the public file. Per 29 C.F.R. § 18.85(b), this Tribunal specifically finds that paragraph 1 of the Settlement Agreement contains confidential commercial and financial information.

In the event that a FOIA request is made for access to the unredacted copy of the Settlement Agreement, the Department of Labor will provide the parties with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. However, the parties are reminded that the pre-disclosure notice procedure does not, in any way, constitute a finding that the Settlement Agreement, or any portion thereof, will be exempt from disclosure under FOIA. Similarly, this procedure does not suggest that the appropriate disclosure officer would ultimately decline disclosure of the settlement agreement to the FOIA requester, if such a FOIA request were received. *See* 29 C.F.R. § 70.26(f).

Order

1. The Respondent’s request to approve the parties’ fully executed Settlement Agreement and dismiss their SOX claims is GRANTED. **However, the parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 2, 3, and 15 that are beyond its jurisdiction or otherwise unenforceable.**
2. The proposed Settlement Agreement is fair and reasonable as to the claims under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002. None of the terms are against the public interest. The proposed Settlement Agreement is APPROVED, and the parties are ORDERED to comply with its terms.

This matter is DISMISSED with prejudice. The hearing in this matter is hereby CANCELLED.

SO ORDERED

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey