

U.S. Department of Labor

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Issue Date: 09 April 2019

Case No.: 2019-SOX-00021
OSHA No.: 5-4760-19-007

In the Matter of:

IVAN J. GRIMM,
Complainant

v.

WUNDERMAN and BEST BUY CO., INC.
Respondents,

ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This action involves a complaint under the employee protection provisions of the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, *et seq.* (Sarbanes-Oxley, SOX, or Act) and the implementing regulations at 29 C.F.R. Part 1980, and Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (CFP), 12 U.S.C. § 5567, and the applicable regulations issued thereunder at 29 C.F.R. Part 1985.

A hearing was scheduled for September 11, 2019 in Minneapolis, MN before the undersigned Administrative Law Judge. Pursuant to the request for the appointment of a settlement judge in this matter by Counsel for the named Respondents and the Complainant, on March 19, 2019, Administrative Law Judge Sean M. Ramaley was appointed to serve as the settlement judge in this proceeding. By Order dated April 5, 2019, all parties were advised of the conclusion of the settlement proceedings and return of the case to me for further action. On that same day, April 5, 2019, the parties filed a Joint Motion for Approval of Settlement Agreement resolving the issues before me as well as other charges filed by the Complainant pending before the Equal Employment Opportunity Commission. The Joint Motion for Approval of Settlement Agreement also provides for the dismissal of the instant matter with prejudice. The Settlement Agreement was attached to the joint motion as Exhibit A (hereinafter Agreement).

The SOX regulations address settlements at 29 C.F.R., §1980.111(d)(2) which states as follows:

At 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 if the case is before the

administrative law judge. . . A copy of the settlement will be filed with the administrative law judge . . .

A settlement approved by the Administrative Law Judge shall constitute the final order of the Secretary and may be enforced in United States District Court pursuant to section §1980.113 (Federal District Court). 29 C.F.R. §1980.111(e).

I have carefully reviewed the terms of the Agreement which encompass settlement and release of matters arising under the Act, as well as other federal, state, and local statutes and principles of contract and common law. It should be noted that my authority extends only to approving matters properly before the U.S. Department of Labor, Office of Administrative Law Judges, i.e., the SOX case, and therefore my review is limited to those matters over which I have proper jurisdiction. *See Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2 (Sec’y Nov. 2, 1987).

The Respondents have not asserted pre-disclosure notification rights in accordance with 29 C.F.R. §70.26.¹ Nor have the parties requested restricted access to the Agreement under 29 C.F.R. §18.85. However, the terms of the Agreement include a confidentiality provision limited only by disclosures required by law and to the Complainant’s attorney and accountant and then only after obtaining the agreement of those parties to treat the terms of the Agreement as confidential (Agreement at Para. 4). It has been held in a number of cases with respect to confidentiality of settlement agreements that the Freedom of Information Act (FOIA),² requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which may be made available for public inspection and copying under the FOIA.

Pursuant to 29 C.F.R. §18.85 upon the motion of an interested person or on the Judge’s own, the Administrative Law Judge may seal a portion of the record to protect against undue disclosure of privileged, sensitive or classified material. However, 29 C.F.R. §18.85(b)(2) provides that notwithstanding the Judge’s Order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.

In light of the confidentiality provision of the Agreement and noting the sensitive nature of the financial terms of the Agreement, I have decided to seal the Settlement Agreement from full disclosure to the public. Specifically, I have decided to redact the financial terms of the Agreement from disclosure to the public. Accordingly, the Agreement with the redaction of the financial terms will be placed in a separate sealed envelope and marked “**SETTLEMENT**”

¹The parties are afforded the right to request that information be treated as confidential business information. See 29 C.F.R. §70.26 (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, an unredacted copy of the Settlement Agreement in this matter will be placed in an envelope marked “PREDISCLURE NOTIFICATION MATERIALS.” Consequently, before any information in this unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2016).

² 5 U.S.C. §552, *et seq.* (1988).

AGREEMENT REDACTED FOR PUBLIC DISCLOSURE”. An unredacted version of the Agreement will be placed in a separate sealed envelope and marked **“UNREDACTED AGREEMENT – NOT FOR PUBLIC DISCLOSURE.”**

I find the provisions of the Settlement Agreement are fair, adequate, reasonable and not contrary to the public interest. Accordingly, I GRANT the parties’ Joint Motion for Approval of the settlement and their further request to dismiss the instant complaint with prejudice. This Order shall have the same force and effect as one made after a full hearing on the merits.

ORDER

WHEREFORE, it is ORDERED THAT:

1. The Settlement Agreement is **APPROVED**;
2. The hearing currently scheduled for **September 11, 2019** at **9:00 a.m.** in Minneapolis, Minnesota is **CANCELLED**; and
3. The Complaint is **DISMISSED WITH PREJUDICE**.

The financial terms of the Settlement Agreement are designated as sensitive information, and shall be redacted from public disclosure, as detailed above.

PATRICIA J. DAUM
Administrative Law Judge