



Issue Date: 10 July 2019

Case No.: 2019-SOX-00002

In the Matter of:

MICHAEL KATZ

Complainants

v.

UNITED HEALTH GROUP

Respondent

ORDER APPROVING SETTLEMENT AND DISMISSING CLAIM

This matter arises out of a complaint of discrimination filed pursuant to two federal whistleblower protection provisions: 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”); and Section 1558 of the Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, 29 U.S.C. § 218c (“ACA”). Implementing regulations are at 29 C.F.R. Parts 1980 and 1984, respectively. By Order dated May 24, 2019, the presiding Administrative Law Judge, Theresa C. Timlin, scheduled a hearing for October 17-18, 2019, in New York City, New York. On June 17, 2019, the undersigned was appointed as a settlement judge in this matter. During mediation with the undersigned, the parties agreed to principle terms of settlement. For administrative purposes, this matter was thereafter re-assigned to the undersigned to review and, if appropriate, approve the settlement agreement.

On July 2, 2019, the parties emailed the undersigned and informed him that they had executed a settlement agreement in this matter. The parties attached the executed settlement agreements¹ to the email for the undersigned’s approval. On July 10, 2019, Respondent filed an unopposed Motion to Seal paragraph 2 of both settlement agreements.

¹ The matter before this Tribunal involved whistleblower complaints under both SOX and ACA, but Complainant also had another discrimination claim pending against Respondent before the New York State Division on Human Rights. As the parties reached a global settlement agreement, the parties attached copies of the separate executed settlement agreements in the SOX/ACA and the NYSDHR

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* Paragraph 4. The Tribunal limits its review to the asserted SOX/ACA 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, except where federal law controls. *See* Paragraph 11. 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 11 is inconsistent with the statute, that paragraph is void and unenforceable.

Third, this Tribunal ORDERS paragraph 2 (including subparagraphs (a) through (c)) of both settlement agreements to be sealed.² 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 agreements 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 agreements will be placed in the public file. Per 29 C.F.R. § 18.85(b), this Tribunal specifically finds that paragraph 2 of the settlement agreements contain confidential commercial and financial information.

In the event that a FOIA request is made for access to the unredacted copies of the settlement agreements, 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 agreements, 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 agreements to the FOIA requester, if such a FOIA request were received. *See* 29 C.F.R. § 70.26(f).

ORDER

1. The parties' request to approve their fully executed settlement agreement³ and dismiss Complainant's SOX/ACA claim is GRANTED. **However, the parties are advised that this Tribunal does not bind the parties to the provisions in Paragraphs 4 and 11 that are beyond its jurisdiction or otherwise unenforceable.**

matters for review, though acknowledging that the undersigned only has jurisdiction over the SOX/ACA complaints.

² Nothing in this Order is to be interpreted as the Tribunal placing some sort of limits on other courts or tribunals that have jurisdiction over the other matters addressed in these agreements.

³ Again, the Tribunal only has the authority to approve the settlement agreement addressing the SOX/ACA matter.

2. The proposed settlement agreement is fair and reasonable as to the claims under both SOX and ACA. None of the terms are against the public interest. The proposed SOX/ACA 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