



Issue Date: 24 July 2019

CASE NO.: 2019-SOX-00038

IN THE MATTER OF

COBRAIN MOORE

Complainant

v.

CO-OP FINANCIAL SERVICES

Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed under the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A *et seq.* (SOX), and the regulations at 29 C.F.R. Part 1980. By letter dated April 1, 2019, the Assistant Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration, acting as agent for the Secretary of Labor, issued an order dismissing the complaint. The Complainant timely objected to the Secretary's preliminary order and requested a hearing pursuant to 29 C.F.R. 1980.106. The matter is scheduled for a hearing on November 15, 2019, which is cancelled due to approval herein of the parties' settlement agreement.

On July 15, 2019, the parties filed a Joint Motion to Dismiss Complaint with accompanying Confidential Settlement Agreement and General Release ("Settlement Agreement"). In reviewing the terms of the Settlement Agreement, I have assessed whether the terms fairly, adequately, and reasonably settle the Complainant's allegations against Respondent under SOX. *See* 29 C.F.R. § 1980.111(d)(2). I find that the Settlement Agreement complies with the required standard, and thus it is **APPROVED**. *See id.*; *Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 2 (ARB Sept. 30, 2010).

The parties also ask that the Settlement Agreement be maintained in a "clearly marked, separate part of the record," citing 29 C.F.R. § 18.85, and they also ask for pre-disclosure notification rights under the Freedom of Information Act (FOIA), 29 C.F.R. § 70.26(b), (c). Although the parties do not specify whether they seek application of § 18.85(a) or (b), I note that they have not requested sealing any part of the record (to which (b) applies), only that the

Settlement Agreement be clearly marked and maintained separately in the record.¹ I find the request to be consistent with their invocation of procedures under 29 C.F.R. § 70.26(b) & (c), which provide for notice to submitters of confidential commercial information (claimed under FOIA Exemption 4) and opportunity to object to disclosure of such information.

Given the parties' agreement that the terms of their Agreement are confidential and considering that they may wish to invoke Exemption 4 in the event the office receives a FOIA request for the Settlement Agreement, the request is **GRANTED**. Accordingly, the Confidential Settlement Agreement and General Release shall be marked with a notice that the parties object to disclosure in the event the office receives a FOIA request for the Settlement Agreement, and that the parties have asked for pre-disclosure notification under 29 C.F.R. § 70.26 prior to any release of information. This procedure is in accordance with the precedent of the Administrative Review Board. *See Bettner v. Crete Carrier Corp.*, ARB No. 07-093, ALJ No. 2007-STA-033, slip op. at 3, n.11 (ARB Sept. 27, 2007); *Davis v. Ecoscape Solutions Group*, ARB No. 08-098, ALJ NO. 2008-STA-048, slip op. at 2-3 (ARB Jul. 31, 2008).

ORDER

The Settlement Agreement is **APPROVED**. *See* 29 C.F.R. § 1980.111(d)(2).

The Complaint is **DISMISSED** with prejudice.

The Confidential Settlement Agreement and General Release filed with this office shall be maintained in a clearly marked envelope with the following notice:

In the event that this settlement agreement and attachments are the subject of a FOIA request, the parties assert that the records are exempt from production under FOIA Exemption 4. The parties request notice and an opportunity to object to any FOIA production of the settlement agreement and attachments. *See* 29 C.F.R. § 70.26.

ORDERED this 24th day of July, 2019, at Covington, Louisiana.

ANGELA F. DONALDSON
Administrative Law Judge

¹ Adjudicative filings are only sealed when the reasons to seal outweigh the presumption of public access. *See* 29 C.F.R. § 18.85(b). The files maintained by this office are typically subject to disclosure under FOIA unless an exemption applies. *See* 5 U.S.C. § 552