



**Issue Date: 30 September 2020**

Case No.: 2020-SOX-00022

In the Matter of

**GLORIA IKOSI**

Complainant

v.

**CLS BANK INTERNATIONAL**

Respondent

**DISMISSAL ORDER APPROVING SETTLEMENT AND FILING UNDER SEAL**

The above-captioned proceeding arises before the Office of Administrative Law Judges (“OALJ”) from a complaint filed by Gloria Ikosi (“Complainant”) against CLS Bank International (“Respondent”) under the employee protection (*i.e.*, whistleblower) 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”) and the implementing regulations at 29 C.F.R. Part 1980. It also arises under the employee protection provisions of the Consumer Financial Protection Act of 2010 (“CFPA”), as amended, 12 U.S.C. § 5567, and the implementing regulations at 29 C.F.R. 1985.

On September 8, 2020, Respondent, with consent of Complainant, submitted the parties’ “Consent Motion To Approve Settlement Agreement And To Protect Confidential Business Information,” (“Consent Motion”) with Exhibits A through D attached. A document entitled “Confidential Settlement Agreement And General Release” (“Settlement Agreement”) is attached as “Exhibit A” with information redacted from its paragraph number 2 (“Consideration.”) and the contents of Exhibit D redacted in its entirety.

The Consent Motion states that the parties agreed the Settlement Agreement in its entirety constitutes Confidential Business Information (“CBI”) entitling the parties to pre-disclosure notification in the event of request under the Freedom of Information Act (“FOIA”). The Consent Motion also requests that the Settlement Agreement “be designated as CBI which will not be included in the public record and which will not be disclosed pursuant to a FOIA request without prior notice to the Parties and that Section 2 of the Agreement will be redacted and/or sealed and not included in the public record.” Finally, the Consent Motion requests the Settlement Agreement be approved and the matter be dismissed.

On September 18, 2020, an Order was issued to the parties, directing submission of their Settlement Agreement without redactions as to allow for meaningful review of its terms prior to any approval. Enclosed with a letter received from Respondent's counsel on September 23, 2020, the undersigned received the unredacted Settlement Agreement as executed by the parties in this matter via UPS express mail.

As submitted, the undersigned finds the Settlement Agreement is fair and reasonable, and approves it with some caveats.

First, the language in the Settlement Agreement purports to release, acquit, or otherwise address claims or potential claims that far exceed whistleblower protection provisions of SOX and CFPA. *See* Settlement Agreement, Paragraph 6. The review and approval of the Settlement Agreement by the undersigned is limited to the whistleblower claims as presented under SOX and CFPA which are within the jurisdiction of the OALJ.

Second, language in the Settlement Agreement provides that it shall be governed by the laws of the State of New York. *See* Settlement Agreement, Paragraph 9. However, per 29 C.F.R. § 1980.113, “[w]henver any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under [SOX], the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred”, and [w]henver any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under [SOX], a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.” Therefore, to the extent that any provision of the Settlement Agreement conflicts with SOX's implementing regulation regarding enforcement of any final order issued in this matter, it must be deemed void and unenforceable.

In the cover letter accompanying the unredacted Settlement Agreement, Respondent has made a request, with Complainant's consent, that both the redacted and unredacted versions of the Settlement Agreement be subject to pre-disclosure notice and response safeguards of the Freedom of Information Act (“FOIA”) as outlined at 29 C.F.R. § 70.26. The OALJ Rules of Practice and Procedure do allow for sealing of the record and Respondent's request is construed as a request for such a sealing. *See* 29 C.F.R. § 18.85(b). After considering the facts of this case, the terms of the Settlement Agreement, the undersigned concludes good reason only exists to seal the unredacted Settlement Agreement.

This Office will place the Settlement Agreement (unredacted version) with its Exhibits A through D in a sealed envelope within the public file. A copy of this Order will be affixed to that envelope. The initially-submitted redacted version of the Settlement Agreement with its Exhibits will be placed in the public file. Per 29 C.F.R. § 18.85(b), the undersigned specifically finds that Paragraph 2 of the Settlement Agreement (including subparagraphs a through d) and Exhibit D of the Settlement Agreement/Consent Motion contain sensitive commercial or financial information and could result in a competitive disadvantage if disclosed, and that the parties

would otherwise hold this information private within the ordinary course of business. *See Food Marketing Institute v. Argus Leader Media*, \_\_ U.S. \_\_\_, 139 S. Ct. 915 (2019).

In the event that a 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).

Based on the foregoing, the following is ordered:

1. The parties' Consent Motion is **GRANTED**;
2. The Settlement Agreement is **APPROVED** as outlined above;
3. This matter is **DISMISSED** with prejudice before the OALJ.

**SO ORDERED.**

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill New Jersey