



Issue Date: 30 December 2020

Case No.: 2020-SOX-00018

In the Matter of

LAWRENCE RUSSELL,
Complainant

v.

WELLS FARGO BANK,
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AND SEALING CERTAIN TERMS**

1. Nature of Motion. Pursuant to 29 C.F.R. § 18.71(a), the parties submitted a motion requesting the undersigned approve a proposed settlement agreement in this matter. As part of the motion, the parties requested some terms of the settlement agreement be sealed.

2. Procedural History and Findings of Fact.

a. This case arises pursuant to a complaint alleging violations under the employee protective 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 (the "Act"), and the implementing regulations at 29 C.F.R. Part 1980.

b. Complainant filed a retaliation complaint with the Occupational Safety and Health Administration (OSHA) against Respondent, asserting conduct that violated the Act.

c. The Secretary issued findings and a preliminary order and concluded that no violation of the Act occurred.

d. Complainant objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ). The undersigned issued a Notice of Case Assignment and Prehearing Order on March 17, 2020, setting a scheduling teleconference for April

15, 2020. This scheduling teleconference was continued on multiple occasions on motion of the parties.

e. On December 23, 2020, the parties – both represented by counsel – filed a “Joint Motion for Order Approving Settlement Agreement and Sealing Settlement Agreement” for the undersigned’s approval.

f. The parties’ motion requested approval of a settlement agreement marked as Exhibit “1” in redacted form excluding confidential financial information pertaining to the terms of payment to Complainant and terms regarding no re-employment of Complainant, confidentiality, and mutual non-disparagement. The parties also separately submitted to the undersigned through e-mail filing an unredacted version of Exhibit “1”, marked as Attachment “A”, which contains all confidential redacted information. The parties requested Attachment “A” not be filed in the public record.

3. Applicable Law and Analysis.

At any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled. If the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. 29 C.F.R. § 1980.111(d)(2).

Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

The undersigned reviewed and fully considered the parties’ settlement agreement and all the terms contained therein. The undersigned concludes all the terms in the settlement agreement are fair, adequate, reasonable, and not contrary to public policy.

A request by parties to seal a portion of a settlement agreement is considered and approved by an ALJ pursuant to the requirements of 29 C.F.R. § 18.85(b)(1), which states:

On motion of any interested person or the judge’s own, the judge may order any material that is in the record to be sealed from public access. The motion must propose the fewest redactions possible that will protect the interest offered as the basis for the motion. A redacted copy or summary of any material sealed must be made part of the public record unless the necessary redactions would be so extensive that the public version would be meaningless, or making even a redacted version or summary available would defeat the reason the original is sealed.

Additionally, subparagraph (b)(2) states:

An order that seals material must state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of the

public access. Sealed materials must be placed in a clearly marked, separate part of the record. Notwithstanding the judge's order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.

After considering the facts of this case, the terms of the settlement agreement and the parties' arguments in support of their motion, the undersigned concludes good reason exists to seal the portions of the settlement agreement that address the specific terms of payment to and re-employment of Complainant, confidentiality of the agreement, and non-disparagement of the parties. Specifically, the undersigned believes public release of this information could cause substantial harm to the competitive position of the person from whom the information was obtained.

Notwithstanding the undersigned's above analysis and conclusions, all of the parties' submissions in this matter, including the settlement agreement, become part of the record of the case. As such, they are potentially subject to the FOIA, 5 U.S.C. § 552(a). If a FOIA request is made for the settlement agreement in this matter, the U.S. Department of Labor will respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26 if such a FOIA request and review are conducted.

4. Ruling and Terms of Order. The parties' joint motion is granted and the settlement agreement is **APPROVED**.

a. The settlement shall be enforced pursuant to the Act. The parties shall implement the terms as stated in the settlement agreement to the extent not otherwise accomplished.

b. This order shall have the same force and effect as one made after a full hearing on the merits.

c. The settlement agreement marked Exhibit "1" is redacted of confidential information and is not sealed. The settlement agreement marked Attachment "A" has been sealed and will remain confidential unless released as required by legal authority. In order to have the document sealed, the parties submitted Attachment "A" separately to the undersigned via e-mail filing; it was not filed with the redacted settlement agreement marked Exhibit 1 and filed via the DOL Electronic Filing Service (EFS) or processed in the OALJ Case Tracking System (CTS).¹ The official print version of Attachment "A" is in a sealed envelope with a Sealed Document Notice in the companion administrative paper case file for this matter. Authorized access to this sealed document in this matter can only be obtained by contacting the Executive Assistant of the OALJ Covington District office.

d. The settlement agreement marked Attachment "A" should not be unsealed except by authorized appellate authorities or pursuant to a properly processed request under the Freedom of Information Act (FOIA). If the settlement agreement document is the subject of a FOIA request,

¹ EFS and CTS system does not provide ALJs with a method for sealing a document in a case. As a result, an ALJ must use a companion paper case file folder to maintain sealed documents.

the individual processing the request and contemplating unsealing Attachment "A" shall apply the terms of this order and ensure the parties in this matter receive written notice of the intent to unseal and release this document as required by FOIA.

SO ORDERED this day.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE