

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 22 January 2019

CASE NO.: 2018-SPA-00002

In the Matter of:

WILLIAM M. DiFRANCESCO,
Complainant,

v.

DISCOVERING AMISTAD INC.
and ROSAMOND WITTE,
Respondent.

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

This proceeding arises under the whistleblower protection provisions of the Seaman's Protection Act ("SPA"), 46 U.S.C. § 2114(a), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111-281, and as implemented by 29 C.F.R. § 1986 (2016). By letter dated July 12, 2018, the Assistant Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"), acting as agent for the Secretary of Labor ("Secretary"), issued an order dismissing the complaint. On August 7, 2018, the Complainant, by letter, objected to the Secretary's preliminary order dismissing his complaint, and requested a hearing pursuant to 29 C.F.R. § 1986.106, which was set to commence on March 19, 2019 in New London, Connecticut.

The parties participated in settlement judge proceedings before Judge Timothy McGrath, and on December 11, 2018, I held a hearing on the record where the parties indicated that through the Settlement Judge process, they reached a resolution of all contested issues. I subsequently issued an order cancelling the trial and setting a deadline for filing settlement documentation. On January 15, 2019, the parties filed a series of documents: (1) Motion to Seal Settlement Agreement; (2) Motion for Order Approving Settlement; and (3) Release and Settlement Agreement filed under seal (hereinafter "Stipulation"). The Stipulation is filed under seal and its contents will remain confidential subject to my rulings below.

In reviewing the Stipulation, I must determine whether the terms of the agreement fairly, adequately, and reasonably settle the Complainant's allegations that the Respondent violated the SPA whistleblower provisions. *See* 29 C.F.R. § 1986.111(d)(2). I find that the Stipulation complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1986.111(d)(2), subject to my comments below.

Considering the request to seal and keep confidential, the Respondent asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Stipulation therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties' request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Stipulation contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Stipulation, the parties are advised that notwithstanding the confidential nature of the Stipulation, all of their filings, including the Stipulation, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Stipulation be restricted by the undersigned under 29 C.F.R. § 18.85 (Restricted Access). I find good cause for such restricted access and the Stipulation will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.85 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3 (ALJ Jan. 16, 2008).

One additional point requires brief attention. My authority over settlement agreements is limited to the statutes and regulations that are within my jurisdiction as defined by the SPA. Therefore, I approve only the terms of the Settlement Agreement pertaining to DiFrancesco's

current SPA case, 2018-SPA-00002. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Upon consideration of the Stipulation and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under the SPA. The terms adequately protect the Complainant, and it is in the public interest to approve the Stipulation as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- 1) The request to seal and keep the Stipulation confidential is **GRANTED**;
- 2) The motion to approve the Stipulation is **GRANTED**;
- 3) The Stipulation is **APPROVED**;
- 4) The Stipulation shall be designated as confidential subject to the procedures requiring disclosure under FOIA;
- 5) The Complaint of William DiFrancesco is **DISMISSED WITH PREJUDICE**; and;
- 6) This order shall constitute the final order of the Secretary. 29 C.F.R. §1986.111(e).

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts