

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 August 2017

Case No.: **2017-WPC-5**

In the Matter of:

DONALD RUNYON,
Complainant,

v.

LOCUS SOLUTION LLC
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT, DISMISSING COMPLAINT
WITH PREJUDICE AND CANCELLING HEARING**

This matter arises under the whistleblower protection provisions of the Federal Water Pollution Control Act ("Act"), 33 U.S.C. §1367. On March 21, 2017, I issued a Pre-Hearing Order setting the matter for formal hearing in Akron, Ohio commencing on October 23, 2017.

On August 24, 2017, I received a Joint Motion to Approve Settlement. Attached to this Motion is a fully-executed Confidential Settlement Agreement and Release ("Settlement Agreement"). The Settlement Agreement calls for a lump-sum payment to be made by Respondent to Complainant, and also requires Respondent to pay attorney fees to Complainant's counsel. The Settlement Agreement contemplates the dismissal of Complainant's complaint. All parties are represented by counsel.

Pursuant to 29 C.F.R. § 24.111(d)(2), I have reviewed the Settlement Agreement to determine whether the terms of the settlement provide a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondent violated the Act.

The parties have agreed to keep the terms and conditions of their settlement confidential, to the extent permitted by law. However, notwithstanding the parties' settlement, the parties' submissions, including those ordered, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (FOIA). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15, (ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998). The records in this case are agency records which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the settlement agreement in the above-captioned claim, the

U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.¹

I find the terms of the Settlement to be fair, adequate, reasonable, and are not contrary to public policy. The terms of the settlement are therefore **APPROVED**. Upon my approval, the parties shall implement the terms of the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits, and it thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §24.113.

IT FURTHER ORDERED that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that the hearing scheduled for October 23, 2017, in Akron, Ohio, is **CANCELLED**.

Steven D. Bell
Administrative Law Judge

¹ The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 29 C.F.R. § 70.26(b). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS." Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.