



**Issue Date: 28 February 2020**

CASE NO.: 2019-CFP-00005

*In The Matter of:*

KEVIN OAKESON,  
Complainant,

v.

WELLS FARGO BANK, N.A.,  
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

This matter arises under the employee protection provisions of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5567, and the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (SOX; collectively the “Acts”), and their respective implementing regulations at 29 C.F.R. Parts 1980 and 1985.

On February 25, 2020, the parties submitted a signed Confidential Settlement Agreement (“Settlement Agreement”) that resolves all issues pending for hearing in this matter.

At any time after the filing of objections to the Assistant Secretary’s findings, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. 29 C.F.R. § 1980.111(c),(d)(2); *accord* 29 C.F.R. § 1985.111(c), (d)(2); *see also* 29 C.F.R. § 18.71(a). A copy of the settlement shall be filed with the ALJ. *Id.* Any settlement approved by the administrative law judge will constitute the final order of the Secretary and may be enforced in the appropriate United States District Court. 29 C.F.R. § 1980.111(e); *accord* 29 C.F.R. § 1985.111(e).

The Settlement Agreement includes a broad release of liability which resolves “any and all claims, demands, causes of action, complaints or charges, known or unknown, of any kind or character, that Complainant made or asserted in his Complaint, or that he could have made or asserted in that Complaint . . .,” i.e., plausibly covering a multitude of state and federal laws other than the CFPA and SOX. My authority over settlement agreements is limited to the statutes within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this CFPA and SOX case. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 3 (ARB Dec. 31, 2008). Accordingly, my approval extends only to the terms of the Settlement Agreement pertaining to Complainant’s CFPA and SOX case.

The Settlement Agreement also included a confidentiality provision agreed to by the parties. The files maintained by this Office, including this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. *See* 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ NO. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997). The parties agree that the Settlement Agreement is confidential, and the parties have requested in the Settlement Agreement that any request for disclosure under FOIA be handled under 29 C.F.R. § 18.85 (“Privileged, Sensitive, or Classified Material”) and 29 C.F.R. § 70.26, which implements FOIA Exemption 4, *see* 5 U.S.C. § 552(b)(4), at USDOL. FOIA Exemption 4 provides for certain procedural and substantive rights prior to disclosure of commercial information.

I ORDER that the Settlement Agreement be placed in a sealed and separate envelope, clearly marked with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. Part 70 prior to any release of the documents contained. *See also Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019) (interpreting scope of confidential information under Exemption 4).

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions appear to be fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and approved. The parties are ordered to carry out the provisions of the Settlement Agreement. The parties having resolved all the issues pending for hearing, the case is now concluded. All dates are vacated and the case is closed.

SO ORDERED.

EVAN H. NORDBY  
Administrative Law Judge