

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Cherry Hill, New Jersey

Issue Date: 12 October 2023 Case No.: 2022-CFP-00002

In the Matter of:

EVELYN FARIA-WALDMAN,
Complainant

v.

METROPOLITAN COMMERCIAL BANK,
Respondent

**ORDER GRANTING JOINT MOTION FOR ADJOURNMENT OF CASE SCHEDULE,
APPROVAL OF SETTLEMENT, SEALING OF SETTLEMENT, AND DISMISSAL
WITH PREJUDICE**

This case arises from a claim for compensation and benefits filed by Evelyn Faria-Waldman (“Complainant”) against Metropolitan Commercial Bank (“Respondent”), pursuant to the Consumer Financial Protection Act (“CFPA”) of 2010, 12 U.S.C. § 5567 and the regulations promulgated thereunder at 29 C.F.R. Part 1985 and 20 C.F.R. Part 24. The CFPA prohibits covered employers from discharging or otherwise discriminating against employees regarding their terms and conditions of employment who have engaged in certain protected activities regarding their terms and conditions of employment. The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges (“OALJ”) found at 29 C.F.R. Part 18, Subpart A also apply.

On October 10, 2023, the parties submitted a document entitled “Confidential Settlement Agreement” (“Settlement Agreement”) for approval, along with their pleading entitled “Joint Motion For Adjournment of Case Schedule, Approval of Confidential Settlement Agreement, And Dismissal of Case with Prejudice” (“Joint Motion”).¹ The Settlement Agreement is incorporated herein by reference. The Settlement Agreement includes a confidentiality provision limiting certain disclosures of its terms by the parties. Nonetheless, the records in this proceeding are subject to disclosure under the Freedom of Information Act (“FOIA”). See 5 U.S.C. §552; *Johnson v. U.S. Bancorp*,

¹ On the same date, the parties also separately filed a pleading entitled “Joint Motion To Seal Confidential Settlement Agreement,” requesting that the unredacted Settlement Agreement (attached to it as Exhibit 1) be sealed.

ARB No. 13-014, 13-046, ALJ No. 2010- SOX-00037, slip op. at 2 (ARB July 22, 2013). The Department of Labor will follow appropriate pre-disclosure notification procedures to address any assertion that an exemption to FOIA applies.²

The parties provided two copies of the Settlement Agreement as exhibits to the Joint Motion: the first, identified as “Exhibit 1” is an unredacted version of the Settlement Agreement, and the second, identified as “Exhibit 2” is a redacted version of the Settlement Agreement.

The parties have requested sealing of their Settlement Agreement.³ The OALJ procedural rule found at 29 C.F.R. § 18.85 provides a presumption of public access to materials filed with the OALJ and allows for sealing of records in derogation of that presumption only after meeting certain conditions. In order to keep an agreement confidential, the ALJ must state the findings explaining why the reasons to seal the agreement outweigh the presumption of public access.

After considering the facts of the case, the terms of the Settlement Agreement, and the parties’ arguments in support thereof, I conclude that good reason exists to seal that portion of the Settlement Agreement related to the amount of settlement consideration as confidential commercial information. Nonetheless all of the parties’ submissions in this matter, including the Settlement Agreement, become part of the record of the case and thus are potentially subject to disclosure under FOIA. If a FOIA request is made for the Settlement Agreement in this matter, Department of Labor will determine whether to exercise its discretion to claim any applicable exemption. The parties are entitled to predisclosure notification rights under 29 C.F.R. § 70.26 in the event of a FOIA request and review.

Upon my review, the terms of the agreed settlement are fair, equitable, adequate, and reasonable and was not procured by duress. Therefore, the Settlement Agreement is **APPROVED** pursuant to 29 C.F.R. § 1985.111(d)(2). As I have approved the Settlement Agreement, this Order will have the same force and effect as one made after a full hearing on the merits. I note that my authority over, and approval of, this Settlement Agreement is limited to the statutes and terms that are within my jurisdiction and authority as defined by the applicable statute.

Accordingly, for the reasons set forth above, it is **ORDERED** that the Joint Motion is **GRANTED**, such that:

- The parties’ Confidential Settlement Agreement is **APPROVED**, and becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1985.111(e) and § 1985.113;

² See *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB March 27, 1997)(“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.”).

³ The parties’ request to this effect is construed as an assertion of their pre-disclosure notification rights pursuant to 29 C.F.R. §70.26.

- The parties' request to place the Settlement Agreement ("Exhibit 1") under seal⁴ is **APPROVED**;
- The hearing last scheduled for November 8-10, 2023 and postponed until further notice is **CANCELED**; and
- The complaint filed in this matter is **DISMISSED** with Prejudice.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

⁴ Pursuant to 29 C.F.R. § 18.85(b), a redacted copy of the sealed Settlement Agreement has been made part of the public record within the OALJ Case Tracking System. The unredacted Settlement Agreement containing the confidential terms of payment has been sealed and marked with a Sealing Notice and will remain confidential in a private OALJ electronic network file folder unless released as required by law. The unredacted Settlement Agreement should not be unsealed except by authorized appellate authorities or pursuant to a properly processed request under FOIA. If the Settlement Agreement document is the subject of a FOIA request, the individual processing the request and contemplating unsealing the Settlement Agreement will 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 and 29 C.F.R. § 70.26.