

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, DC

Issue Date: 18 January 2024

OALJ Case No.: 2023-SDW-00002
OSHA Case No.: 301003230

In the Matter of:

BRIAN MCAVOY,
Complainant,

v.

DAILY'S PREMIUM MEATS,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT

This matter arises under the employee protection provisions of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300j-9, and the procedural regulations found at 29 C.F.R. Part 24.

On or about August 18, 2022, Complainant filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging Respondent terminated his employment on or about August 18, 2022 in retaliation for raising concerns about unsafe bacteria being released into the city’s drinking water system. OSHA dismissed the complaint by letter dated May 25, 2023. Complainant appealed the dismissal and the Office of Administrative Law Judges docketed the above referenced case on May 30, 2023. It is not yet scheduled for hearing.

On January 11, 2024, counsel for the Respondent filed *Joint Notification of Full Settlement and Motion To Terminated Proceeding*, advising the tribunal that the parties have reached a settlement and submitting an executed *Settlement and Release Agreement* (“Settlement”) for my review and requesting this matter be dismissed.

Proceedings under the SDWA may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement.¹

¹ 29 C.F.R. § 24.111(d)(2) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an

A settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the SDWA regulations direct the parties to file a copy of the settlement “with the administrative law judge or the ARB, as the case may be.” 29 C.F.R. § 24.111(d)(2). Any settlement approved by the ALJ or the ARB constitutes the final order of the Secretary and may be enforced pursuant to § 24.113. 29 C.F.R. § 24.111(e).

Having reviewed the settlement agreement and its provisions, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest.² I also find that the settlement was not procured through duress.³ Accordingly, the Motion is GRANTED. To the extent not already provided, the parties shall implement the terms of the approved settlement as specifically stated in their agreement.

ORDER

All pending deadlines are REVOKED, the Settlement is APPROVED, and, upon payment of the agreed sums, this matter is DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

administrative law judge, the settlement is contingent upon the approval of the administrative law judge.

² The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I will have the settlement agreement sealed. However, notwithstanding the parties’ agreement, the parties’ submissions, including the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a). If a FOIA request is made for the settlement agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

³ Complainant and Respondent were represented by counsel.