



Issue Date: 01 May 2008

Case No: 2007-SOX-00048

In the Matter of:

ANNE DAVIS,
Complainant

v.

BAUSCH & LOMB, INC.,
Respondent

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

This case arises out of a complaint of discrimination filed pursuant to the employee protection provisions of Public Law 107-204, Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, *et seq.* (“the Sarbanes-Oxley Act” or “the Act”), enacted on July 30, 2002. Under § 806 of the Act, employees who “provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of [certain provisions of the Sarbanes-Oxley Act], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders...” are given the right to bring a “civil action to protect against retaliation...” 18 U.S.C. § 1514A(a)(1). The Sarbanes-Oxley Act extends such protection to employees of companies “with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) [“SEA of 1934”] or that is required to file reports under § 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d)).” 18 U.S.C. § 1514A(a). The Secretary of the Department of Labor, through its Agency, the Occupational Safety and Health Administration (“Secretary” or “OSHA,” hereinafter), is authorized by the Act to conduct investigations into complaints. Parties may appeal the findings of the Secretary to the United States Department of Labor’s Office of Administrative Law Judges (“OALJ,” hereinafter).

**On October 28, 2006, Anne Davis (“Complainant”) filed a complaint of discrimination with OSHA against Bausch & Lomb, Inc. (“Respondent”), alleging that she had been subjected to an adverse employment action for engaging in activity protected by the Act. OSHA dismissed the complaint and Complainant appealed that decision to OALJ. The case was assigned to me, and the parties jointly requested appointment of a settlement judge to assist them in the resolution of the dispute. On February 21, 2008, I received the Notice of Conclusion of Settlement Judge Proceeding, indicating that the parties should submit a settlement proposal pursuant to 29 C.F.R. § 18.9(e)(10). On March 31, 2008 the parties submitted their proposed Settlement Agreement and Release (hereinafter, “Agreement”) for approval and to dismiss the

complaint with prejudice. The parties also jointly request that the terms of the Agreement remain confidential.

I have carefully reviewed the terms of the Agreement and find it sets forth sufficient grounds to GRANT the parties' request that the Agreement be kept confidential. I acknowledge the parties request for exemption of the Agreement from production under any request for information brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and find that it conforms with the confidentiality procedures set forth at 29 C.F.R. § 70.26. Although the Department of Labor is responsible for making determinations regarding the application of FOIA and exemptions from disclosure, I find that the parties are entitled to pre-disclosure notice, as defined by 29 C.F.R. § 70.26.

FINDINGS OF FACT

I make the following findings:

1. The Agreement is fair, adequate, and reasonable on its face;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits; and,
3. The Agreement reflects the entire understanding between the parties and fully settles all controversies arising from the circumstances underlying the claims under the Act.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Agreement between the parties is APPROVED, and the parties shall comply with the terms thereof;
2. The complaint of Anne Davis is DISMISSED WITH PREJUDICE;
3. The terms of the Agreement shall not be disclosed by any party or OALJ, either specifically or generally, pursuant to 29 C.F.R. § 70.26.

A

JOSEPH E. KANE
Administrative Law Judge