



**Issue Date: 23 October 2007**

**CASE NO.: 2007-SOX-00063**

*In the Matter of:*

**JAMES P. DUFFY,**  
*Complainant,*

**V.**

**UNITED COMMERCIAL BANK,**  
*Respondent.*

### **ORDER APPROVING SETTLEMENT**

This is a proceeding under the provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("Act"), 18 U.S.C. §1514A. The Complainant, James P. Duffy, filed a complaint of discrimination with the Department of Labor against Respondent, United Commercial Bank. On October 17, 2007, the parties submitted a pleading styled "Withdrawal of Objections" and a signed Settlement Agreement and General Release which resolves all issues raised in the Complaint, for review and approval by the undersigned administrative law judge.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Initially, I note that the parties are represented by counsel. The parties have requested that the settlement agreement be maintained in confidence by the Office of Administrative Law Judges and that access to the agreement by third parties be restricted to the full extent that the law permits. Apparently, Respondent asserts its pre-disclosure notification rights pursuant to 29 C.F.R. § 70.26, and thereby requests prompt notification should the settlement agreement become the subject of a Freedom of Information Act (FOIA) request.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the case, including the settlement agreement, become a part of the record in this case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have apparently indicated that the settlement agreement comprises and includes confidential commercial information which they believe are exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Mr. Duffy. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the settlement agreement.

Accordingly, this case is **DISMISSED** with prejudice.

A

Russell D. Pulver  
Administrative Law Judge

*San Francisco, California*