



**Issue Date: 07 December 2011**

**Case No.: 2007-SOX-00047**

*In the Matter of:*

**THOMAS S. INMAN,**  
*Complainant,*

v.

**FANNIE MAE,**  
*Respondent.*

Appearances:

*For the Complainant:*

Michael D. Kohn, Esquire, Richard R. Renner, Esquire, Kohn, Kohn & Colapinto, LLP,  
Washington, District of Columbia

*For the Respondent:*

Madonna A. McGwin, Esquire, Anne M. English, Esquire, Fannie Mae, Washington,  
District of Columbia

**BEFORE: STEPHEN L. PURCELL**  
Chief Administrative Law Judge

## **FINAL DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT**

This case arises under Section 806, the employee protection provision, of the Sarbanes-Oxley Act of 2002 (SOX) and its implementing regulations. 18 U.S.C.A. § 1514A (Thomson/West 2010); 29 C.F.R. Part 1980 (2010). On August 14, 2006, Thomas S. Inman filed a complaint alleging that Fannie Mae violated the SOX when it discharged him from employment. On November 30, 2011, the parties submitted a Joint Motion for Dismissal with Prejudice requesting approval of a Settlement Agreement.

The SOX regulations provide in pertinent part:

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

29 C.F.R. § 1980.111(d)(2) and (e) (2011).<sup>1</sup>

I have reviewed the Settlement Agreement and find that it is fair, adequate, and reasonable, and does not contravene the public interest. In approving the settlement, I make the following clarifications and findings:

The Settlement Agreement may encompass the settlement of matters under laws in addition to the SOX. *See* Settlement Agreement ¶¶ 1, 3, 6 and 7. Since my authority over settlement agreements is limited to the matters that are within the jurisdiction of the Office of Administrative Law Judges, my approval is limited to this case, and I approve the agreement only insofar as it pertains to Inman's SOX claim in ALJ Case No. 2007-SOX-00047.

I construe the phrase in paragraph 14(b) of the Agreement stating that "the laws of the District of Columbia shall govern this Agreement" as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States.

The Settlement Agreement is marked "*Contains Confidential Business Information Exempted From FOIA.*" The parties are advised that notwithstanding this marking, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

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.

*Seater v. S. Cal. Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-13 USDOL/OALJ Reporter at 2 (ARB March 27, 1997) (emphasis added). Should a FOIA request be made for the

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<sup>1</sup> New interim final rules governing SOX procedure went into effect on November 3, 2011. *See* 76 Fed. Reg. (Nov. 3, 2011). Only stylistic changes were made to 29 C.F.R. § 1980.111(d)(2) and (e), and the procedure for approval of adjudicatory settlements is essentially the same as under the prior regulations.

Settlement Agreement, the parties are entitled to pre-disclosure notification under 29 C.F.R. § 70.26.

Finally, I note that paragraph 11 of the Settlement Agreement contains an agreement by Inman not to apply or reapply for any position at Fannie Mae, either as a employee, or as a contractor, consultant or vendor. I find that this waiver of future employment with Fannie Mae is not against public interest. I find that it does not prevent Inman from working in his or her chosen field in the locality where he resides; that Inman will receive adequate consideration in exchange for the waiver of future employment with Fannie Mae; that the waiver was reasonable in view of the corresponding risks of litigation; and that the Complainant was represented by able and experienced legal counsel, had adequate time to consider whether to accept this term of the Agreement, and made the waiver on a knowing and voluntary basis.

Accordingly, it is **ORDERED** that the Settlement Agreement is **APPROVED** and that the parties' Joint Motion for Dismissal with Prejudice is **GRANTED**.

A

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**Washington, DC**