



Issue Date: 07 January 2013

CASE NO: 2009-SOX-00040

In the Matter of:

LISA CHARLES LEWIS,
Complainant,

v.

PROFIT INVESTMENT MANAGEMENT,
PROFIT FUNDS INVESTMENT TRUST,
THE PROFIT FUND, EUGENE A. PROFIT, and
MICHELLE Q. PROFIT,
Respondents.

ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

On December 20, 2012, I ordered the parties to submit their settlement agreement for approval under 29 C.F.R. § 1980.111(a) and (d)(2), after having been informed that the case had been settled. A copy of the settlement agreement was received on January 3, 2013, along with a “Line of Dismissal” purporting to be Complainant’s dismissal of her claim with prejudice.

There is no provision under the employee-protection provisions of the Sarbanes-Oxley Act (“SOX” or “the Act”) for unilateral dismissal of a complaint. When a complainant wishes to withdraw her complaint based on a settlement, the settlement must be submitted for approval by the administrative law judge. I must review the terms and conditions of the settlement to determine whether the terms of the agreement are fair, adequate, and reasonable, and do not contravene the public interest. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 3 & n. 8 (Jan. 31, 2011), *Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 2 (ARB Sept. 30, 2010). Accordingly, the “Line of Dismissal” is ineffective to terminate this matter.

Upon review of the settlement agreement, I find that its terms are fair, adequate, and reasonable, and do not contravene the public interest. However, it appears to be a global settlement purporting to dispose of claims in addition to the claim brought under SOX. My authority to approve the settlement agreement is limited to matters that are before me – that is, to approve the settlement agreement only insofar as it resolves the complaint under the Act. My approval should not be construed as approval of the resolution of any claims brought under any other federal statute or under state law.

In addition, the settlement agreement provides that the parties shall keep the terms of the settlement confidential.¹ I note that the parties' submissions, including the settlement agreement, become part of the record of this case and are subject to the Freedom of Information Act (FOIA). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure. Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.²

Finally, I construe paragraph 7, stating that the agreement and release "shall be construed and enforced in accordance with the laws of the State of Maryland" 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.³

Accordingly, with the reservations noted above and limiting my approval to the SOX claim, IT IS ORDERED:

1. The Confidential Settlement Agreement and Release is APPROVED; and
2. The complaint is DISMISSED WITH PREJUDICE.

SO ORDERED.

PAUL C. JOHNSON, JR.

Associate Chief Administrative Law Judge

¹ Confidential Settlement Agreement and Release, ¶ 4.

² 29 C.F.R. § 70 *et seq.* (2007).

³ *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).