



Issue Date: 08 October 2009

Case No. 2009-SOX-47

In the Matter of:

JAMES J. TERBEEEST,
Complainant,

v.

CRDENTIA CORP.,
Respondent.

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

This matter arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A (“Act” or “SOX”), as implemented by 29 C.F.R. Part 1980. This statutory provision, in part, prohibits an employer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and companies required to file reports under Section 15(d) of the Securities Exchange Act of 1934 from discharging, or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee provided the employer or Federal Government information relating to alleged violations of 18 U.S.C. §§ 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), 1348 (security fraud), any rule or regulation of the Securities and Exchange Commission (“SEC”), or any provision of federal law relating to fraud against shareholders.

On October 2, 2009, the parties filed a Joint Motion to Approve Settlement and Dismiss Claims and attached settlement agreement (hereinafter, “Agreement”), seeking approval of the Agreement and the dismissal of the complaint with prejudice. The SOX regulations address settlements. Specifically, 29 C.F.R. §1980.111(d)(2) states:

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 administrative law judge if the case is before the judge. . . . A copy of the settlement will be filed with the administrative law judge . . .

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to Section 1980.113 (Federal District Court). 29 C.F.R. § 1980.111(e).

I note that the Agreement encompasses settlement of matters under laws other than the Sarbanes-Oxley Act. My authority to approve settlements is limited to the SOX matter that is within my jurisdiction, as specifically provided under that statute. Therefore, I approve only the terms of the agreement pertaining to the Complainant's SOX claim. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2 (Sec'y Nov. 2, 1987).

Paragraph 8. b. of the Agreement provides that the Agreement shall be governed, interpreted, and enforced under the laws of the State of Texas. The ARB has construed similar "choice of law" provision[s] 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." *Pegg v. Crest Foam Company, et. al.*, ARB NO. 08-129, ALJ No. 2008-STA-049, (ARB Nov. 4, 2008) citing *Philips v. Citizens' Ass'n for Sound Energy*, 191-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The Complainant and Respondent were both represented by counsel and have been advised concerning the Agreement by the same. The Complainant voluntarily accepts the Agreement. Having reviewed the Agreement, I find the provisions are fair, adequate and not contrary to the public interest. Further, the Agreement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the Agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.

Additionally, the Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. I emphasize that "[t]he parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552. FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such request, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70.

ORDER

IT IS HEREBY ORDERED that:

1. The Settlement Agreement is APPROVED;
2. The complaint is DISMISSED WITH PREJUDICE; and,
3. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION”, under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

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JOSEPH E. KANE
Administrative Law Judge