

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 29 June 2017

ALJ NO.: 2017-STA-00037

In the Matter of:

EDWARD FERRARI,
Complainant,

v.

SKYVIEW FARMS, INC.,
BENJAMIN RICKERSTON,
Respondents.

**ORDER GRANTING COMPLAINANT'S UNOPPOSED MOTION TO APPROVE
SETTLEMENT AND DISMISS PROCEEDING**

This proceeding arises from a complaint of discrimination filed under employee protection provisions of Section 405 of the Surface Transportation Assistance Act ("STAA"), as amended, 49 U.S.C.A. § 31105 (West 2008) and the procedural regulations found at 29 C.F.R. Part 1978 (2012). On June 28, 2017, the Complainant filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice, along with a copy of the Settlement Agreement.

Implementing Federal regulations at 29 C.F.R. §1978.111(d)(2) provide that "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 ALJ...". In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the STAA. *See Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-36 (ARB Dec. 16, 2009); *Thompson v. G&W Transportation Co., Inc.*, 90-STA-25 (Sec'y Oct.24, 1990). Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 C.F.R. §1978.111(e).

Based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby APPROVED pursuant to 29 C.F.R. § 1978.111(d)(2).

In addition, I note the parties' classification that the settlement be confidential and therefore accorded confidential treatment. The rules governing confidential treatment to such information are set forth at 29 C.F.R. § 70.26, and the parties' request will be granted pursuant to the rule. The copy of the Settlement Agreement therefore is being maintained in a separate envelope and identified as being confidential commercial information. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. § 70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, 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-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant's STAA claim, Case No. 2017-STAA-00037. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The Complainant's Unopposed Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;

(3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA; and

(4) The Complaint of Edward Ferrari is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts