



**In the Matter of:**

**PRISCILLA CATHERINE TEUTSCH,  
COMPLAINANT,**

**v.**

**ING GROEP N.V., NATHAN ESHELMAN,  
JEREMY EAVES, SECURITY LIFE OF  
DENVER INSURANCE, ING AMERICA  
INSURANCE HOLDINGS, ING  
NORTH AMERICAN<sup>1</sup> INSURANCE, and  
LION CONNECTICUT HOLDINGS, INC.,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Diane S. King, Esq., *King & Greisen, LLP*, Denver, Colorado**

*For the Respondent:*

**Kurt A. Powell, Esq., Emily Burkhardt Vicente, Esq., and Leslie K. Eason,  
Esq., *Hunton & Williams, LLP*, Atlanta, Georgia**

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT WITH PREJUDICE**

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<sup>1</sup> Both Teutsch and ING refer to this subsidiary as ING North America Insurance Corporation.

This case arose when the Complainant, Priscilla Teutsch, filed a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX or the Act).<sup>2</sup> On September 25, 2006, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) granting motion for summary decision because ING Groep was not a proper party for lack of proper service of process. The ALJ also dismissed all other respondents as “the record d[id] not reveal that ING Groep, N.V. and its officers had control over the management of the subsidiaries, or Nathan Eshelman or Jeremy Eaves.” R. D. & O. at 4. Teutsch filed a timely petition requesting the Administrative Review Board (Board) to review the ALJ’s R. D. & O.<sup>3</sup> The Secretary of Labor has delegated to the Board her authority to issue final administrative decisions in cases arising under SOX.<sup>4</sup> The Board issued a Notice of Appeal and Order Establishing Briefing Schedule. Both parties filed briefs with the Board.<sup>5</sup>

Before the Board reached a decision on the merits, Teutsch submitted a motion to withdraw her appeal and attached a Settlement Agreement and Mutual Release. The parties may settle a case arising under SOX if the participating parties agree to a settlement and they provide the Board with a copy of the settlement for its review and approval.<sup>6</sup> For the reasons set out below, we approve the Settlement Agreement.

The Board notes that the Agreement encompasses the settlement of matters under laws other than SOX.<sup>7</sup> Our authority to review settlement agreements is limited to the statutes within our jurisdiction.<sup>8</sup> Therefore, we have restricted our review of the

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<sup>2</sup> 18 U.S.C.A. § 1514A (West 2008). The regulations implementing SOX are found at 29 C.F.R. Part 1980 (2007).

<sup>3</sup> 29 C.F.R. § 1980.110(a).

<sup>4</sup> Secretary’s Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. §§ 1980.110.

<sup>5</sup> On October 17, 2008, the Administrative Review Board issued a request for additional briefing from the Assistant Secretary of Labor for Occupational Safety and Health and from interested parties. The Assistant Secretary and The Employment Law Group each filed a request for an extension of time to file an amicus brief. Because the parties have settled, the request for additional time is moot.

<sup>6</sup> 29 C.F.R. § 1980.111(d)(2).

<sup>7</sup> See, e.g., paras. 2.E, 3.A,3.B of the Settlement Agreement and Mutual Release.

<sup>8</sup> *Saporito v. GE Med. Sys.*, ARB No. 05-009, ALJ Nos. 2003-CAA-001, 002, slip op. at 3 (ARB May 24, 2005).

Continued . . .

Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this SOX case over which we have jurisdiction. We have determined that the terms do so settle the case; moreover, neither party has alleged otherwise.

The Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.<sup>9</sup> The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).<sup>10</sup> FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>11</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for responding to appeals by requestors from denials of such requests.<sup>12</sup>

Furthermore, if the provisions in paragraph 5 of the Settlement Agreement were to preclude Teutsch from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable "gag" provisions.<sup>13</sup>

Finally, we construe paragraph 12, the enforceability provision, 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.<sup>14</sup>

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<sup>9</sup> Settlement Agreement and Mutual Release, para. 5.

<sup>10</sup> 5 U.S.C.A. § 552 (West 2007).

<sup>11</sup> *Coffman v. Alyeska Pipeline Serv. Co.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, 006, slip op. at 2 (ARB June 24, 1996).

<sup>12</sup> 29 C.F.R. § 70 *et seq.* (2006).

<sup>13</sup> *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997); *Conn. Light & Power Co. v. Sec'y, U.S. Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant's ability to provide regulatory agencies with information; improper "gag" provision constituted adverse employment action).

<sup>14</sup> *Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have agreed to settle Teutsch's SOX claim. Accordingly, as construed, we **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**