



In the Matter of:

JOHN J. CARCIERO,

ARB CASE NO. 09-067

COMPLAINANT,

ALJ CASE NO. 2008-SOX-012

v.

DATE: September 30, 2010

**SODEXHO ALLIANCE, S.A.,
SODEXHO, INC.,
and SODEXHO OPERATIONS, LLC,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

John J. Carciero, Woburn, Massachusetts, *pro se*, and E. James Perullo, Esq., Bay State Legal Services, LLC, Boston, Massachusetts

For the Respondents:

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

Before: Paul M. Igasaki, Chief Administrative Appeals Judge, and Joanne Royce, Administrative Appeals Judge.

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

John J. Carciero complained that Sodexho Alliance, S.A.; Sodexho, Inc.; and Sodexho Operations, LLC (jointly, Sodexho) violated the whistleblower protection

provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX or Act),¹ and its implementing regulations² when Sodexho terminated his employment. A Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Granting Summary Decision and Dismissing Complaint (D. & O.). Carciro appealed the ALJ's decision to the Administrative Review Board (ARB or Board).³ While the case was pending before the Board on appeal, the parties filed a Joint Motion for Approval of Settlement and Motion to Dismiss on August 30, 2010, informing the Board that the parties reached a settlement of their case. The parties have jointly requested that the Board approve the settlement agreement and dismiss the complaint.

The applicable regulations specifically provide that “[a]t 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 such settlement is approved by the ALJ or the Board.⁴ “A copy of the settlement must be filed with the ALJ or the Board . . . as the case may be.”⁵ A settlement under the SOX cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable.⁶ Pursuant to well-established precedent, the Board will not dismiss a complaint in which there is a settlement between the private parties unless the settlement is provided to the Board for its review and approval.⁷

Because Carciro and Sodexho have jointly submitted the settlement as required, and no party has indicated any opposition to its terms, we deem the terms of the settlement agreement unopposed and will review it in accordance with the applicable regulations.⁸

¹ 18 U.S.C.A. § 1514A (Thomson/West Supp. 2010).

² 29 C.F.R. Part 1980 (2009).

³ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the SOX. Secretary’s Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

⁴ 29 C.F.R. § 1980.11(d)(2).

⁵ *Id.*

⁶ *Bhat v. D.C. Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2-3 (ARB May 30, 2006).

⁷ See e.g., *Macktal v. Sec’y of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Keough v. Surmodics, Inc.*, ARB No. 09-041, ALJ No. 2008-SOX-065, slip op. at 2 (ARB Aug. 27, 2009).

⁸ See 29 C.F.R. § 24.111(d)(2) (2010).

Review of the agreement reveals that it encompasses the settlement of matters “under any applicable law,” such as the SOX.⁹ The Board’s authority over settlement agreements is limited to the statutes that are within the Board’s jurisdiction as defined by the applicable statute. Thus, our approval is limited to this case, and we approve the agreement only insofar as it pertains to Carciro’s SOX claim in ARB No. 09-067 (ALJ No. 2008-SOX-012), the case currently before the Board.¹⁰

We also construe paragraph 64, stating that the agreement “shall be governed by the laws of the State of New York without regard to any conflict of laws principles” 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.¹¹

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Carciro’s SOX claim.¹² The Board finds that the settlement is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁹ Settlement Agreement, ¶ 44.

¹⁰ See *Keough*, ARB No. 09-041, slip op. at 2.

¹¹ *Id.* at 3.

¹² Settlement Agreement, ¶ 44.