

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 December 2004

CASE NO.: 2004 SOX 46

In the Matter of

JOSEPH STEPHEN KUDLA II
Complainant

v.

SHIRE US MANUFACTURING, INC.
Respondent

Appearances: Lynn Cole, Attorney
For the Complainant

Robert J. Reid, Attorney
For the Respondent

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**FINAL ORDER APPROVING SETTLEMENT --
DISMISSAL OF COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provision 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 to 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.

Pursuant to Notice of Hearing, dated April 30, 2004, I set a hearing date of June 2, 2004 for this case in Tampa, Florida. Due to Mr. Kudla's request for additional time to obtain an attorney, I continued the hearing until July 9, 2004. Subsequently, based on the parties' representations concerning an attempt to settle the case, I canceled the scheduled hearing and continued the proceedings on June 28, 2004.

On December 15 and 16, 2004, the parties signed an agreement which fully settles and resolves their dispute. Both parties were ably represented by counsel. The Complainant represents his understanding of the agreement's provisions and voluntarily accepts the settlement. Having reviewed the agreement, I find the provisions are fair, adequate and not contrary to public interest.¹ Further, the settlement 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.

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws. To effectuate such confidentiality, I have sealed the settlement agreement. However, notwithstanding the parties' agreement, the parties' submissions, including the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (a). If a FOIA request is made for the settlement agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.²

ORDER

1. The parties' Settlement Agreement is **APPROVED**.
2. The SOX complaint of Mr. Joseph Stephen Kudla, II, is **DISMISSED WITH PREJUDICE**.

SO ORDERED:

A
RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: December 16, 2004
Washington, D.C.

¹See *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9, 89-ERA-10 (Sec'y Mar. 23, 1989) and *Heffley v. NGK Metals Inc.*, 89-SDW-2 (Sec'y Mar. 6, 1990).

²See *Debose v. Carolina Power and Light Co.*, 92-ERA-14 (Sec'y Feb. 7, 1994) and *Darr v Precise Hard Chrome*, 95-CAA-6 (Sec'y May 9, 1995).