



Issue Date: 16 January 2008

CASE NO.: 2006-SOX-00129

In the Matter of:

ELLEN SHARP,  
Complainant,

v.

THE HOME DEPOT INC.,  
Respondent.

### DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

A settlement has been reached in the instant case, which was brought under the employee protection (whistleblower) provisions of the Sarbanes Oxley Act of 2002, 18 U.S.C. §1514A, with implementing interim regulations appearing at 29 C.F.R Part 1980.

On December 31, 2007, by facsimile, the parties jointly filed an Agreed Notice of Settlement and Motion to Restrict Access to the Settlement Agreement, together with a copy of a Settlement Agreement and General Release (signed by Claimant, her counsel, and a representative of Home Depot) (hereafter "Settlement Agreement") for my approval. *See* 29 C.F.R. §1980.111(d)(2) (requiring submission of adjudicatory settlements to administrative law judge for approval). Another copy of the Settlement Agreement was sent by facsimile on January 2, 2008. Subsequently, I set up a conference call for the purpose of clarifying two matters, and that conference call was held on January 4, 2008. A clearer copy of the Settlement Agreement, together with supplemental information contained in an Addendum, was subsequently provided by facsimile of January 11, 2008. As used herein, the term "Settlement Agreement" will include the Addendum.

Section 1980.111 (d) (2) and (e) of title 29, C.F.R. provides in relevant part:

(2) *Adjudicatory settlements.* 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, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be. [Emphasis added]

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

To the extent that the Settlement Agreement relates to matters under laws other than the Sarbanes-Oxley Act, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that the Respondent violated the SOX. *See generally Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987).

I note that the Settlement Agreement itself incorporates certain confidentiality provisions binding upon the parties. Having reviewed those provisions, I find that the provisions do not run afoul of the requirements of law. *See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F.3d 89 (2d Cir. 1996); *Bragg v. Houston Lighting & Power Co.*, 1994-ERA-38 (Sec'y June 19, 1995).

Respondent has asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and all copies of the Settlement Agreement and Addendum are therefore being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties' request. *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) and 70.36(e), as well as personal information relating to Complainant. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. Here, the parties have asserted a basis for protection of the Settlement Agreement under Exemptions 4 and 6 of the Freedom of Information Act. As the Administrative Review Board (ARB) has noted: "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 were applicable, the document would have to be disclosed." *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997).

The parties have also requested that access to the Settlement Agreement be restricted by the undersigned under 29 C.F.R. § 18.56 (Restricted Access). I find good cause for such restricted access and the Settlement Agreement and Addendum will be so maintained under that authority as well. **SO ORDERED.**

Having reviewed the Settlement Agreement, I find that it is a fair, adequate, and reasonable settlement of the complaint in this matter and it is consistent with public policy considerations. This Decision and Order Approving Settlement constitutes the final order to the Secretary and is enforceable as such. 29 C.F.R. § 1980.111(e), 1980.113. Accordingly,

**ORDER**

**IT IS HEREBY ORDERED** that the Settlement Agreement be, and hereby is **APPROVED**, and the parties shall comply with the terms thereof forthwith; and

**IT IS FURTHER ORDERED** that the complaint of Complainant Ellen Sharp in the instant case be, and hereby is, **DISMISSED WITH PREJUDICE**.

**A**

PAMELA LAKES WOOD  
Administrative Law Judge

Washington, D.C.