

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 July 2004 CASE NO.: 2003 AIR 40

In the Matter of

KELLY LEWIS

Complainant

v.

**JET-A-WAY CHARTERS LLC/
NORTHSTAR AVIATION**

Respondent

And

DENISTON ENTERPRISES

Respondent

Appearances:

Mr. Stephen Fanning, Attorney
For the Complainant

Mr. John P. Kalled, Attorney
For Jet-A-Way Charters

Mr. Michael P. Coyle, Attorney
For Deniston Enterprises (to October 16, 2003)

Mr. J. Craig Weller, Attorney
For Deniston Enterprises (as of October 16, 2003)

Before:

Richard T. Stansell-Gamm
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER -
APPROVING SETTLEMENT AND DISMISSING COMPLAINT**

This proceeding arises under the employee protection provision of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, 49 U.S.C. § 42121, ("AIR 21" or "Act"). On July 9, 2004, I received a Joint Motion to Approve Settlement Agreement and Stipulation of Dismissal with Prejudice signed by counsel for the parties. In the motion, the parties indicated they have reached a complete settlement agreement. The terms of the settlement are set forth in Attorney Stephen Reid, Jr.'s March 15, 2004 letter to Attorney Stephen T. Fanning, which I received on July 27, 2004.

In the settlement agreement, the parties settle the complaint. As part of the agreement, the Complainant agrees to withdraw her complaint with prejudice and the parties agree to a

dismissal of the complaint with prejudice. The parties also request that the specific terms of the settlement agreement remain confidential consistent with the Freedom of Information Act and the Privacy Act.

In my review of the settlement agreement, I must ensure the terms of the agreement are fair, adequate, reasonable and not against public interest. With this standard of review in mind, I first note both parties were ably represented by counsel and the Complainant represents his understanding of the agreement provisions and voluntarily accepts the settlement.

The parties agree to keep the terms of the settlement agreement confidential. The Complainant will not disclose or discuss the contents of the agreement with any person other than his attorney, financial counselors, family members and agency employees implementing the terms of the agreement. Correspondingly, the Respondent agrees to treat the agreement under the provision of the Privacy Act, 5 U.S.C. §552 (a).

Notwithstanding the confidentiality provision, the parties' submissions, including the terms of the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA" or "Act"), 5 U.S.C. §552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. 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. *See 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).

Upon my review of the terms of the settlement agreement, I find they are fair, adequate, reasonable and not contrary to the public interest. Accordingly the complaint, captioned 2003 AIR 40, is **DISMISSED** with prejudice.

SO ORDERED:

RICHARD T. STANSELL-GAMM
Administrative Law Judge

A
THOMAS M. BURKE
Associate Chief Administrative Law Judge
On Behalf of Judge Stansell-Gamm who has
reviewed and approved the Order.

Washington, D.C.