



Issue Date: 30 August 2005

CASE NO. 2004-TSC-00001

In the Matter of:

ROGER G. WALSH,
Complainant,

V.

RESOURCE CONSULTANTS, INC.,
Respondent.

**ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT WITH
PREJUDICE BASED ON STIPULATION OF PARTIES**

On June 14, 2005, I issued a Recommended Decision and Order for Complainant (“D&O”) which resolved the liability issue in Complainant’s favor and reserved the damages issue for additional briefing and consideration.

Respondent subsequently filed its petition for review of the D&O with the ARB.

On July 28, 2005, the parties submitted for approval a Confidential Settlement Agreement and Mutual Release (the “Agreement”) and a Stipulation for Dismissal with Prejudice (the “Stipulation”).

On July 29, 2005, Respondent counsel telefaxed to me a copy of his letter of the same date to the Administrative Review Board (the ‘ARB’). The letter stated that Respondent was withdrawing its request to appeal my earlier non-final recommended decision and order in this case contingent on my approval of the aforementioned Agreement. On August 9, 2005, the parties filed a joint stipulation with the ARB requesting the ARB to dismiss the interlocutory appeal of the D&O and to remand the case to me.

On August 10, 2005, the ARB issued its Final Decision and Order Dismissing Interlocutory Appeal which remanded jurisdiction of this case to me for final disposition.

Section 12, on pages 5-7 of the Agreement, provides that each party and its representatives and attorneys shall not make any written or oral statement or any other comment nor any disclosure to any person (excluding Complainant’s attorneys, spouse, and tax advisors) regarding the settlement reflected by the Agreement or the payment of any sum by the Respondent. The parties further agree that the confidentiality provisions contained in the Agreement are a material part of the Agreement and that the confidentiality clause may be enforced at law or equity, including by injunctive relief.

Because the Office of Administrative Law Judges (“OALJ”) is a government agency, and this case is a public proceeding, the parties’ submissions in this case, including the Agreement, become a part of the record in this case and is subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The Agreement does not appear to be either inadequate or the result of duress. Accordingly:

IT IS ORDERED that the proposed Agreement is hereby **APPROVED**.

In addition, Respondent and Complainant, through their respective attorneys of record, stipulated on July 25, 2005 and July 26, 2005, respectively, that they have fully settled and resolved their dispute and, as a result, request that I dismiss the complaint with prejudice. For good cause shown in compliance with Federal Rules of Civil Procedure Rule 41(a) and 29 Code of Federal Regulations § 18.9(c)(2), I find and order the following:

IT IS FURTHER ORDERED that this action be, and the same hereby is, **DISMISSED With Prejudice** and without cost or attorneys’ fees to either party.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

NOTICE: This Order Approving Settlement and Dismissing Complaint With Prejudice will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.7(d) and 24.8.