



**In the Matter of:**

**SEEMA BHAT,**

**ARB CASE NO. 06-014**

**COMPLAINANT,**

**ALJ CASE NO. 2003-CAA-17**

**v.**

**DATE: May 30, 2006**

**DISTRICT OF COLUMBIA WATER  
AND SEWER AUTHORITY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Bryan J. Schwartz, Esq., *Passman & Kaplan, P.C., Washington, D.C.***

***For the Respondent:***

**Grace E. Speights, Esq., Karen E. Gray, Esq., *Morgan, Lewis & Bockius LLP,  
Washington, D.C.***

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT AND PETITION FOR REVIEW**

This case arose when the Complainant, Seema Bhat, filed a complaint under the Safe Drinking Water Act,<sup>1</sup> alleging that the Respondent, District of Columbia Water and Sewer Authority (WASA) retaliated against her in violation of the SDWA's whistleblower protection provisions. On November 1, 2005, a Department of Labor Administrative Law Judge issued a [Recommended] Decision and Order (R. D. & O.) finding that Bhat established that she engaged in protected activity and that WASA failed

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<sup>1</sup> 42 U.S.C.A. § 300j-9(i) (West 2003).

to demonstrate that it would have fired her in the absence of such activity.<sup>2</sup>

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the SDWA to the Administrative Review Board.<sup>3</sup> WASA filed a timely petition requesting the Board to review the ALJ's R. D. & O.<sup>4</sup> In response, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule.

On May 3, 2006, the parties submitted a Withdrawal of Appeal and Petition for Review Indicating that “[p]ursuant to a settlement agreement executed between the Parties, Complainant withdraws the above-referenced complaint and Respondent withdraws the above-referenced Petition for Review.” Pursuant to well-established precedent, the Board will not dismiss a complaint under the Safe Drinking Water Act, based upon a settlement between the private parties, unless the settlement is provided to the Board for its review and approval.<sup>5</sup> Therefore, the Board informed the parties that if they wished the Board to dismiss the complaint and appeal in this case, they must provide the Board with a copy of the settlement agreement for its approval by May 18, 2006.

The parties submitted the settlement and the Board has reviewed it. Our review reveals that the settlement is intended to settle matters under laws other than the SDWA.<sup>6</sup> Our authority to review settlement agreements is limited to the statutes within our

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<sup>2</sup> R. D. & O. at 67. The SDWA's whistleblower protection provision prohibits an employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions or privileges of employment, i.e., taking adverse action, because the employee has notified the employer of an alleged violation of the Act, has commenced any proceeding under the Act, has testified in any such proceeding or has assisted or participated in any such proceeding. 42 U.S.C.A. § 300j-9(i) (1)(A)(C). *See also* 29 C.F.R. § 24.2 (2005). To prevail on a complaint of unlawful discrimination under the whistleblower protection provision, a complainant must establish by a preponderance of the evidence that the respondent took adverse employment action against the complainant because he or she engaged in protected activity *Powers v. Tennessee Dep't of Env't & Conservation*, ARB Nos. 03-061 and 03-125, ALJ Nos. 2003-CAA-8 and 16, slip op. at 2 (ARB Aug. 16, 2005); *Jenkins v. United States Env't Prot. Agency*, ARB No. 98-146, ALJ No. 1988-SWD-2, slip op. at 16-17 (ARB Feb. 28, 2003).

<sup>3</sup> Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. §§ 24.1, 24.8.

<sup>4</sup> 29 C.F.R. § 24.8(a).

<sup>5</sup> *See e.g., Macktal v. Secretary of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Darr v. Precise Hard Chrome*, 95-CAA-6 (Sec'y May 6, 1995); *Heffley v. NGK Metals*, 89-SDW-2 (Sec'y Apr. 29, 1990).

<sup>6</sup> Settlement Agreement and General Release, ¶¶ 3, 6.

jurisdiction and is defined by the applicable statutes.<sup>7</sup> Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately and reasonably settle this SDWA case over which we have jurisdiction and we have determined that the terms do so settle the case. *Id.* Accordingly, we **APPROVE** the Settlement Agreement and **DISMISS** Bhat's complaint and WASA's appeal in accordance with the parties' Settlement Agreement and General Release.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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<sup>7</sup> *Saporito v. GE Med. Sys.*, ARB No. 05-009, ALJ Nos. 03-CAA-1, 03-CAA-2, slip op. at 3 (ARB May 24, 2005).