



**In the Matter of:**

**BOGDAN RADU,**

**ARB CASE NO. 05-125**

**COMPLAINANT,**

**ALJ CASE NO. 2005-SOX-36**

**v.**

**DATE: August 31, 2007**

**LEAR CORPORATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Karen S. Kienbaum, Esq., *Kienbaum & Associates*, Detroit, Michigan**

*For the Respondent:*

**Maurice G. Jenkins, Esq., *Dickinson Wright, PLLC*, Detroit, Michigan**

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT WITH PREJUDICE**

This case arose when the Complainant, Bogdan Radu, filed a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX or the Act).<sup>1</sup> On June 21, 2005, a Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Motion to Dismiss (D.O.) on the grounds that Radu did not timely file his complaint and that he failed to establish that he was entitled to equitable tolling of the limitations period.

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<sup>1</sup> 18 U.S.C.A. § 1514A (West 2007). The regulations implementing SOX are found at 29 C.F.R. Part 1980 (2006).

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under SOX to the Administrative Review Board (Board).<sup>2</sup> Radu filed a timely petition requesting the Board to review the ALJ's O.D.<sup>3</sup> In response, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. Both parties filed briefs with the Board.

On September 14, 2006, before the Board reached a decision on the merits, Radu submitted a motion to withdraw his appeal and attached a Settlement Agreement and General Release. The parties may settle a case arising under SOX if the participating parties agree to a settlement and they provide the Board with a copy of the settlement for its review and approval.<sup>4</sup> For the reasons set out below, we approve the Settlement Agreement as construed.

The Board notes that the Agreement encompasses the settlement of matters under laws other than SOX.<sup>5</sup> Our authority to review settlement agreements is limited to the statutes within our jurisdiction.<sup>6</sup> Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately and reasonably settle this SOX case over which we have jurisdiction. We have determined that the terms do so settle the case; moreover, neither of the parties have alleged otherwise.

The Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.<sup>7</sup> The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).<sup>8</sup> FOIA requires federal agencies to disclose requested records unless

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<sup>2</sup> Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. §§ 1980.110.

<sup>3</sup> 29 C.F.R. § 1980.110(a).

<sup>4</sup> 29 C.F.R. § 1980.111(d)(2).

<sup>5</sup> *See, e.g.*, para. 2 of the Settlement Agreement and General Release.

<sup>6</sup> *Saporito v. GE Med. Sys.*, ARB No. 05-009, ALJ Nos. 03-CAA-001, 03-CAA-002, slip op. at 3 (ARB May 24, 2005).

<sup>7</sup> Settlement Agreement and General Release, para. 9.

<sup>8</sup> 5 U.S.C.A. § 552 (West 2007).

they are exempt from disclosure under the Act.<sup>9</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests, for responding to appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.<sup>10</sup>

Furthermore, if the provisions in paragraph 9 of the Settlement Agreement were to preclude Radu from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable “gag” provisions.<sup>11</sup>

Additionally, we construe paragraph 8, the governing law provision, as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States.<sup>12</sup>

The parties have agreed to settle Radu’s SOX claim. Accordingly, as construed, we **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

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

**Administrative Appeals Judge**

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<sup>9</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-005, 6, slip op. at 2 (ARB June 24, 1996).

<sup>10</sup> 29 C.F.R. § 70 *et seq.* (2006).

<sup>11</sup> *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Conn. Light & Power Co. v. Sec’y, U.S. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action).

<sup>12</sup> *Phillips v. Citizens Ass’n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).