



Issue Date: 14 January 2009

CASE NO.: 2009-SOX-00013

In the Matter of

SCOTT WERLING

Complainant

v.

**CHARLES SCHWAB AND COMPANY, INC.,
SCHWAB BANK, N.A.,
THE CHARLES SCHWAB CORPORATION,
LARRY GOLDSTEIN, SCOTT JENSEN, JOHN FOY**

Respondents

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

This matter arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A (“Act” or SOX”) as implemented by 29 C.F.R. Part 1980. This statutory provision, in part, prohibits an employer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and companies required to file reports under Section 15(d) of the Securities Exchange Act of 1934 from discharging, or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee provided the employer or Federal Government information relating to alleged violations of 18 U.S.C. §§ 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), 1348 (security fraud), any rule or regulation of the Securities and Exchange Commission (“SEC”), or any provision of federal law relating to fraud against shareholders.

On January 13, 2009, the parties filed a Joint Motion for Dismissal With Prejudice along with a Confidential Settlement Agreement and General Release which fully settles and resolves the parties’ dispute. The SOX regulations address settlements. Specifically, 29 C.F.R. §1980.111(d)(2) states:

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. . . . A copy of the settlement will be filed with the administrative law judge

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to Section 1980.113 (Federal District Court). 29 C.F.R. § 1980.111(e).

I note that the Agreement encompasses settlement of matters under laws other than the Sarbanes-Oxley Act. My authority to approve settlements is limited to the SOX matter that is within my jurisdiction as specifically provided under that statute. Therefore, I approve only the terms of the agreement pertaining to the Complainant's SOX claim. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2 (Sec'y Nov. 2, 1987).

Paragraph 20 of the Agreement provides that the Agreement shall be governed and interpreted under the laws of the State of New Jersey. The Department of Labor's Administrative Review Board ("ARB") has construed similar "'choice of law' provision[s] 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." *Pegg v. Crest Foam Company, et. al*, ARB No. 08-129, ALJ No. 2008-STA-049, (ARB Nov. 4, 2008) citing *Philips v. Citizens' Ass'n for Sound Energy*, 191-ERA-025, slip op. at 2 (Sec'y Nov. 4 1991).

The Complainant and Respondents were ably represented by counsel. The Complainant represents his understanding of the Agreement's provisions and voluntarily accepts the settlement. Having reviewed the agreement, I find the provisions are fair, adequate and not contrary to the public interest. Further, the settlement supports a finding that the complaint be dismissed with prejudice. Accordingly, approval of the agreement is appropriate. Upon my approval, the parties shall implement their settlement as specifically stated in the agreement. This Decision and Order shall have the same force and effect as one made after a full hearings on the merits.

The parties have agreed to keep the specific terms of the agreement confidential, subject to applicable laws, and request that the settlement agreement be sealed and remain confidential pursuant to 29 C.F.R. § 70.26. To effectuate such confidentiality, I have sealed the settlement. However, notwithstanding the parties' agreement, the parties' submission, including the settlement agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). 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 it's discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notifications rights under 29 C.F.R. § 70.26.

ORDER

Wherefore, it is ordered that:

1. The Settlement Agreement is APPROVED;
2. The complaint is DISMISSED WITH PREJUDICE; and
3. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION”, under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

SO ORDERED.

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COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts