



In the Matter of:

JOHN AMBROSE,

ARB CASE NO. 06-096

COMPLAINANT,

ALJ CASE NO. 2005-SOX-105

v.

DATE: September 28, 2007

**U.S. FOODSERVICE, INC. and
ROYAL AHOLD, N.V.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

**Deborah Thompson Eisenberg, Esq., *Brown, Goldstein & Levy, LLP,*
Baltimore, Maryland**

For the Respondent U.S. Foodservice, Inc.:

**Connie Bertram, Esq., Patricia Exposito, Esq.; *Winston & Strawn, LLP;*
Washington, District of Columbia**

For the Respondent Royal Ahold, N.V.:

G. Stewart Webb, Jr., Esq., *Venable LLP,* Baltimore, Maryland

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

This case arose when the Complainant, John Ambrose, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, U.S. Food Service, Inc., had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002

(SOX).¹ On April 17, 2006, a Department of Labor Administrative Law Judge issued an Approval of Motions for Summary Decision, Dismissal of Amended Complaint & Hearing Cancellation (Approval).

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the SOX to the Administrative Review Board.² Ambrose filed a timely petition requesting the Board to review the ALJ's Approval.³ In response, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule.

On September 25, 2007, the parties submitted a "Joint Motion to Dismiss With Prejudice . . . "averring that the parties had signed an agreement that fully settles this action." The SOX's implementing regulations provide in pertinent part:

At any time after the filing of objections to the Assistant Secretary's finding and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the . . . Board if a timely petition for review has been filed with the Board.⁴

The parties submitted the settlement to the Board for its review. Our examination reveals that the settlement is intended to settle not only Ambrose's SOX complaint, but matters arising under other laws as well.⁵ Our authority to review settlement agreements

¹ 18 U.S.C.A. § 1514A (West 2002). SOX's section 806 prohibits certain covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information to a covered employer or a Federal agency or Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C.A. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Employees are also protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to a violation of the aforesaid fraud statutes, SEC rules, or federal law. Ambrose subsequently amended his complaint to include Royal Ahold, N.V. as an additional respondent.

² 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. § 1980.110(a) (2007).

³ 29 C.F.R. § 1980.110(a).

⁴ 29 C.F.R. § 1980.111(d)(2).

⁵ Confidential Settlement Agreement, General Release and Waiver (Settlement) paras. 1, 5, 10.

is limited to the statutes within our jurisdiction and is defined by the applicable statutes.⁶ 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 and we have determined that the terms do so settle the case. Accordingly, we **APPROVE** the Settlement and **DISMISS** Ambrose's complaint **WITH PREJUDICE**.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

⁶ *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).