



In the Matter of:

DANIEL KOLEHMAINEN,

ARB CASE NO. 2021-0027

COMPLAINANT,

ALJ CASE NO. 2020-SOX-00044

v.

DATE: September 27, 2021

CS AUTO HND, LLC,

RESPONDENT.

Appearances:

For the Complainant:

Michael D. Kuhn, Esq. and Andrew E. Swan, Esq.; *Leventhal, Lewis, Kuhn, Taylor, Swan PC*; Colorado Springs, Colorado

For the Respondent:

Danielle L. Kitson, Esq.; *Little Mendelson P.C.*; Denver, Colorado

Before: James D. McGinley, *Chief Administrative Appeals Judge* and Thomas H. Burrell, *Administrative Appeals Judge*

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

PER CURIAM. This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), and its implementing regulations.¹ Daniel Kolehmainen (Complainant) filed a complaint alleging that CS Auto HND, LLC (Respondent) retaliated against him in violation of SOX's whistleblower protection provisions. The Administrative Law Judge (ALJ) issued an order

¹ 18 U.S.C. § 1514A (2010); 29 C.F.R. Part 1980 (2020).

granting Respondent's motion to dismiss. Complainant appealed to the Administrative Review Board (ARB or the Board).

On September 21, 2021, Complainant filed a motion for voluntary dismissal of his appeal, stating that the parties had settled all claims and agreed to dismiss the appeal with prejudice. On September 22, 2021, Complainant filed with the Board the Settlement Agreement and Release (Agreement) for the Board's review and approval.

The SOX implementing regulations provide that the parties may enter into an adjudicatory settlement of a SOX complaint.² The parties must submit a copy of their settlement agreement to the Board, and a settlement under SOX does not become effective until its terms have been reviewed and approved by the Board.³ The Board reviews whether settlement agreements are fair, adequate, reasonable, and in the public interest.⁴ As Respondent has not indicated any opposition to its terms, we deem the terms of the parties' Agreement unopposed and will review it in accordance with the applicable regulations.

Review of the Agreement reveals that it includes the settlement of matters under laws other than the SOX.⁵ The ARB's authority over settlement agreements is limited to claims brought under the statutes that are within the ARB's jurisdiction and pending before the Board.⁶ Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this SOX case over which we have jurisdiction.⁷

The Agreement contains confidentiality and non-disparagement clauses.⁸ The ARB notes that the parties' submissions, including the Agreement, become part of the record and are subject to the Freedom of Information Act (FOIA).⁹ FOIA requires federal agencies to disclose requested records unless the records fit one of

² 29 C.F.R. § 1980.111(d)(2).

³ *Id.*

⁴ *Johnson v. U.S. Bancorp/U.S. Bank Nat'l Assoc.*, ARB Nos. 2013-0014, -0046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013) (citation omitted).

⁵ Agreement at ¶ 4.

⁶ *Cunningham v. Livedeal, Inc.*, ARB No. 2011-0047, ALJ No. 2011-SOX-00004, slip op. at 2 (ARB Aug. 5, 2011).

⁷ *Id.*

⁸ Agreement at ¶ 6 and ¶ 7.

⁹ 5 U.S.C. § 552 (2016).

the exceptions or are otherwise exempt from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for agency responses to FOIA requests and for appeals by requestors from denials of such requests.¹¹ Additionally, if the confidentiality and non-disparagement clauses were interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and constitute unacceptable “gag” provisions.¹²

The Agreement provides that Complainant is excused from the confidentiality obligations “as required by law.”¹³ We construe such language as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with, or provide information to, state and federal authorities about suspected violations of law involving Respondent.¹⁴

The Agreement also provides that it shall be governed by the laws of the State of Colorado.¹⁵ We construe this “choice of law” provision as not limiting the authority of the Secretary of Labor, the ARB, and any federal court with regard to any issue arising under SOX, which authority shall be governed in all respects by the laws and regulations of the United States.¹⁶

The Board concludes that the settlement between Complainant and Respondent is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, with the exceptions set out above, we **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

¹⁰ *Anderson v. Schering Corp.*, ARB No. 2010-0070, ALJ No. 2010-SOX-00007, slip op. at 3 (ARB Jan. 31, 2011) (citing 5 U.S.C. § 552).

¹¹ 29 C.F.R. § 70 *et seq.* (2017).

¹² *Johnson*, ARB Nos. 2013-0014, -0046, slip op. at 3 (citations omitted).

¹³ Agreement at ¶ 6.

¹⁴ *See Pawlowski v. Hewlett-Packard Co.*, ARB No. 1999-0089, ALJ No. 1997-TSC-00003, slip op. at 2 (ARB May 5, 2000) (citation omitted).

¹⁵ Agreement at ¶ 11.

¹⁶ *Anderson*, ARB No. 2010-0070, slip op. at 4 (citation omitted).