



**In the Matter of:**

**TOM HEANEY,**

**ARB CASE NO. 05-039**

**COMPLAINANT,**

**ALJ CASE NO. 04-SOX-72**

**v.**

**DATE: May 19, 2005**

**GBS PROPERTIES LLC d/b/a PRUDENTIAL  
GARDNER REALTORS,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE**

**Appearance:**

*For the Complainant:*

**Tom Heaney, pro se, Metairie, Louisiana**

**FINAL DECISION AND ORDER DISMISSING APPEAL**

The Complainant, Tom Heaney, filed a complaint on June 9, 2004, under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX),<sup>1</sup> and its implementing regulations<sup>2</sup> with the Department of Labor's Occupational Safety and Health Administration (OSHA). Heaney alleged that the Respondent, GBS Properties, unlawfully terminated his employment

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2003).

<sup>2</sup> 29 C.F.R. Part 1980 (2004).

because he engaged in protected activity.<sup>3</sup> OSHA investigated the complaint and issued a letter advising the parties that the complaint lacked merit because GBS was not a publicly-traded company.

Heaney requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On December 2, 2005, the ALJ issued a [Recommended] Decision and Order (R. D. & O.) dismissing Heaney's complaint because "I do not find Complainant has made out a prima facie case demonstrating that he engaged in protected activity under the Act or that he was terminated for any such activity."<sup>4</sup>

Heaney filed a Petition for Review of the R. D. & O. with the Administrative Review Board on December 17, 2004.<sup>5</sup> On March 21, 2005, Heaney informed the Board, "I have retained counsel who has timely filed in Federal Court and I Tom Heaney complainant per-se [sic] request to proceed De-Novo [sic] with counsel in Federal Court." Answer to Show Cause Order at 2.

If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.<sup>6</sup> Accordingly,

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<sup>3</sup> Title VIII of Sarbanes-Oxley is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806 covers companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies. Section 806 protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. 68 FR 31864 (May 28, 2003).

<sup>4</sup> R. D. & O. at 5-6.

<sup>5</sup> See 29 C.F.R. § 1980.110(a). The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX. Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

<sup>6</sup> 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is usual, the 180-day period for deciding the case had expired before the Complainant filed his petition with the Board.

because Heaney has opted to pursue his SOX complaint in district court rather than at the Board, we **DISMISS** his appeal.

**SO ORDERED.**

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

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