



In the Matter of:

DAVID WINDHAUSER,

ARB CASE NO. 05-061

COMPLAINANT,

ALJ CASE NO. 2005-SOX-17

v.

DATE: August 31, 2005

**TRANE, AN OPERATING DIVISION
OF AMERICAN STANDARD, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

**Frank C. Morris, Jr., Esq., Brian Steinbach, Esq., *Epstein Becker & Green, P.C.,
Washington, D.C.***

FINAL DECISION AND ORDER DISMISSING APPEAL

On February 11, 2005, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Denying Respondent's Motion to Stay the Secretary's Order of Reinstatement in this case arising under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (SOX).¹ On February 22, 2005, the Respondent, Trane, filed a Petition for Review of Decision and Order Denying Respondent's Motion to Stay the Secretary's Order of Reinstatement, and Motion to Stay Secretary's Order of Reinstatement Pending Review by the Administrative Review Board.

¹ 18 U.S.C.A. § 1514A (West 2002).

The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under SOX to the Administrative Review Board.² Because the ALJ had not issued his final recommended decision and order in this matter, Trane's request that the Board review the order denying its motion for a stay was an interlocutory appeal. The Secretary's delegation of authority to the Board includes, "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute."³ But because Trane had failed to follow the Board's well-established procedure for perfecting interlocutory appeals,⁴ the Board ordered Trane to show cause why the Board should not dismiss its appeal.

On June 21, 2005, the ALJ issued an Order of Imposition of Monetary Sanctions on Respondent and Dismissal of Case.⁵ The ALJ noted in this order that the parties entered into a settlement of this case on April 21, 2005, and he dismissed the case. Accordingly, we ordered Trane to show cause why the Board should not dismiss its interlocutory appeal as moot.

Trane, responding to the Board's order, agreed that its interlocutory appeal is moot. But Trane stated:

Certain facts pertaining to both the procedural handling and the substantive content of the Petition for Review of the stay denial are likely to be relevant to the issues raised by the Petition for Review of Sanctions. These include, but are not limited to, the facts that: (1) Trane timely had filed the Petition for Review seeking review of the denial of its motion to stay; (2) the Petition for Review sought review of a decision that was in the nature of a denial of injunctive relief; and (3) the Administrative Review Board has not

² Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002).

³ *Id.* at 64273.

⁴ In *Plumley v. Federal Bureau of Prisons*, 86-CAA-6 (April 29, 1987), the Secretary of Labor determined that where an ALJ has issued an order of which the party seeks interlocutory review, the procedure for certifying interlocutory questions for appeal from federal district courts to appellate courts is applicable. In *Plumley*, the Secretary ultimately concluded that because no ALJ had certified the questions of law raised by the respondent in his interlocutory appeal as provided in 28 U.S.C.A. § 1292(b), "an appeal from an interlocutory order such as this may not be taken." Slip op. at 3.

⁵ Trane filed a timely petition for review of this Order and the Board has assigned it docket number 05-127.

ruled on the Petition for Review prior to the settlement, imposition of sanctions and dismissal of the case.⁶

Accordingly, Trane requested that “any dismissal of the Petition for Review as moot should be without prejudice to Trane’s ability to present these facts to the Administrative Review Board for consideration in the pending review of the Administrative Law Judge’s June 1, 2005 order imposing administrative monetary sanctions.”⁷ Since the interlocutory review proceedings before the Board are part of the record that the Board will consider on appeal of the ALJ’s sanctions order, Trane may present relevant facts concerning these proceedings to the Board in support of its petition for review.

Because Trane’s interlocutory appeal of the ALJ’s order denying its request for a stay is moot given the parties’ settlement of the case and its dismissal, we **DISMISS** Trane’s interlocutory appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁶ Respondent’s Response to Order to Show Cause at 2.

⁷ *Id.*