



Issue Date: 06 April 2006

CASE NO.: 2006-SOX-00045

In the Matter of:

SCOTT RUSICK,

Complainant,

v.

MERRILL LYNCH & CO., INC.,

Respondent.

ORDER DENYING COMPLAINANT'S MOTION FOR RECONSIDERATION

By Order issued March 22, 2006, I dismissed Scott Rusick's ("Complainant") complaint before the Office of Administrative Law Judges for the United States Department of Labor ("OALJ"), in which he alleged violations of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, title VIII of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. section 1514A ("the Act"). Appended to the Order was a notice advising Complainant that my Order Dismissing his complaint would become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c), if no petition for review by the Administrative Review Board was filed within 10 days of its issuance, or alternatively, if Complainant did not remove the complaint to Federal district court pursuant to § 1514A(b)(1)(B) of the Act. On March 23, 2006, Complainant filed his complaint in Federal district court, as permitted by the Act, thereby terminating the jurisdiction of OALJ in this matter.

On April 5, 2006, Complainant sent by facsimile a letter in which he requested review of my Order dismissing his complaint. I have construed that letter to be a motion for reconsideration of my Order. As I no longer have jurisdiction in this case, I must decline to consider Complainant's motion for reconsideration of my Order¹. Because the Secretary did not

¹ In addition, Complainant's motion is untimely filed. Although the Rules of Practice and Procedure Before OALJ ("the Rules") do not specifically provide a method by which a party may request reconsideration, § 18.1(a) of the Rules states that "[t]he Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation." 29 C.F.R. § 18.1(a). Pursuant to Fed.R.Civ. Pro. 52(b) "[u]pon motion filed no later than 10 days after entry of judgment [the] court may amend its findings or make additional findings and may amend judgment accordingly." Complainant's motion was filed more than 10 days after the entry of my Decision and Order. The computation of time periods involved in matters before OALJ is provided for at 29 C.F.R. § 18.4, which states:

- (a) *Generally.* In computing any period of time under these rules or in an order issued hereunder the time begins with the day following the act, event or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government in which case the time period includes the next business day. When the period

issue her final Order in this matter within 180 days of filing of the complaint with the Secretary, and because Complainant has removed his action to Federal district court, I fail to see how Complainant would be prejudiced by my dismissal of his case before OALJ.

Accordingly, Complainant's motion is DENIED.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it

of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

- (b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served by the Chief Docket Clerk.

29 C.F.R. § 18.4(a) and (b). The Rules further provide at § 18.4(d) that

Filing or service by facsimile (fax) is effective upon receipt of the entire document by the receiving facsimile machine. For purposes of filings by facsimile the time printed on the transmission by the facsimile equipment constitutes the date stamp of the Chief Docket Clerk.

29 C.F.R. § 18.4(d).