



Issue Date: 19 January 2006

CASE NO: 2005-SOX-00075

In the Matter of

RICHARD A. BLAGRAVE,
Complainant,

v.

NUTRITION MANAGEMENT SERVICES COMPANY;
JOSEPH ROBERTS; and
KATHLEEN HILL,
Respondents.

**ORDER DISMISSING COMPLAINANT'S COMPLAINT UPON
REMOVAL OF THE COMPLAINT TO FEDERAL DISTRICT COURT**

This case arises out of a complaint of discrimination filed pursuant to the employee protection provisions of Public Law 107-204, Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A et seq. ("the Sarbanes-Oxley Act" or "the Act") enacted on July 30, 2002. The Sarbanes-Oxley Act provides the right to bring a "civil action to protect against retaliation in fraud cases" under section 806 to employees who "provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of [certain provisions of the Sarbanes-Oxley Act], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders..." 18 U.S.C. § 1514A(a)(1). The Sarbanes-Oxley Act extends such protection to employees of companies "with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) ["SEA of 1934"] or that is required to file reports under Section 15 (d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d))." 18 U.S.C. § 1514A(a). The Secretary of the Department of Labor, through its agency The Occupational Safety and Health Administration ("Secretary", hereinafter), is authorized by the Act to conduct investigations into complaints. Parties may appeal the findings of the Secretary to the United States Department of Labor's Office of Administrative Law Judges ("OALJ", hereinafter).

Complainant Richard A. Blagrove ("Complainant" hereinafter) filed a complaint against Nutrition Management Services Co. ("Respondent", hereinafter) under the Act with the Secretary on March 14, 2005. After investigation, on May 25, 2005, the Secretary issued her finding that there was no reasonable basis for his complaint. On June 24, 2005, Complainant filed an appeal of that finding and complaint with OALJ, seeking a formal hearing. The case was assigned to

me, and by Order and Notice issued on June 24, 2005, I scheduled a hearing in the matter for July 11, 2005.

On June 28, 2005, I GRANTED Respondent's unopposed motion for a continuance of the matter, and on July 5, 2005, I issued a Notice rescheduling the hearing to Wednesday, August 17, 2005, which date was mutually agreed upon by the parties. By Order issued July 26, 2005, I GRANTED Complainant's motion to amend the complaint to include two named individuals and GRANTED Complainant's motion to compel discovery, in part. By Order issued August 1, 2005, I DENIED the parties' second request for a continuance. By Order issued August 10, 2005, I GRANTED in part and DENIED in part Respondent's Motion in Limine; extended the period in which to respond to discovery; and bifurcated the proceeding into liability and remedies phases. On August 11, 2005, the parties jointly moved for the appointment of a settlement judge in this matter, pursuant to 29 C.F.R. § 18.9(e).

By Order issued August 16, 2005, Chief Administrative Law Judge John J. Vittone appointed Administrative Law Judge Michael P. Lesniak as settlement judge in this case. By correspondence filed on December 7, 2005, Complainant advised me that settlement proceedings did not result in the resolution of the controversy, and further advised that Complainant would seek removal of the case to federal district court. By Order issued December 9, 2005, Judge Lesniak notified the parties that the settlement judge proceedings had concluded without results. The case was returned to me to continue adjudication. In response to my staff's direction, Complainant provided to me a copy of the complaint he filed on December 29, 2005, in the United States District Court for the Eastern District of Pennsylvania, identified as Civil Action 05-6790.

Pursuant to 1514A(b)(1)(B) of the Act, an individual seeking relief may bring an action at law for de novo review in the federal district court if the Secretary has not issued a final decision within 180 days of the filing of the complaint through no fault of the Complainant. Complainant filed his complaint with Secretary on March 14, 2005, and more than 180 days have passed. Although Complainant's request for and participation in settlement proceedings contributed to the lapse of the statutory time period, I do not find that such action constitutes "fault" within the meaning of the Act. Since a hearing has not been held before OALJ in this matter, and no imminent decision is pending to resolve the case, and Complainant has filed a civil action in federal district court, I find it appropriate to relinquish jurisdiction in this matter.

ORDER

I hereby DISMISS the complaint of RICHARD A. BLAGRAVE before the Secretary of the Department of Labor, through the Office of Administrative Law Judges.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey