

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 February 2005

Case No.: 2005-SOX-00020

In the Matter of

MIE KANESAKA WEISS

Complainant

v.

KDDI AMERICA, INC.

KDDI CORPORATION (JAPAN)

Respondent

ORDER DISMISSING THE CLAIM

This claim arises under 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.

On January 14, 2005, the Respondents in this matter moved for summary judgment, on the basis that they do not fall within the scope of 18 U.S.C. § 1514A. In support of their Motion, Respondents submitted evidence that KDDI-A is neither a publicly traded company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("the Act") nor required to file reports under Section 15(d) of the Act, as required by 18 U.S.C. § 1514A(a). However, I denied the motion for summary judgment on January 26, 2005, since Respondents offered no such proof with respect to KDDI-Japan. In that same Order, I directed Complainant to submit proof that Respondent is a publicly traded corporation under Section 12 of the Act or a company that is required to file reports under Section 15(d) of the Act.

Upon the request of Complainant, I issued another Order on February 9, 2005, canceling the hearing in this matter, which had been scheduled for February 16, 2005 in New York City. In addition, I once again ordered Complainant to submit proof that Respondent falls within the provisions of 18 U.S.C. § 1514A. On February 10, 2005, Complainant filed a response, in which she expressed her opinion that "the inquiry is rendered moot" and directed my attention to the affidavit of Toshiaki Miki, Senior Manager of KDDI-Japan. In that affidavit, the Senior Manager affirmed that KDDI-Japan has never been a publicly traded company with a class of securities registered under Section 12 of the Act, nor has it ever been required to file reports under Section

15(d) of the Act. Because Complainant has conceded this fact, the claim is hereby **DISMISSED**.

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PAUL H. TEITLER
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule, 68 Fed. Reg. 31860 (May 29, 2003).