U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 22 December 2004

CASE NO.: 2004-SOX-00078

In the Matter of

JOHN ROULETT
Complainant

v.

AMERICAN CAPITAL ACCESS
Respondent

Appearances:

Andrew M. Lankler, Esquire
Idelle R. Abrams, Esquire
LANKLER & CARRAGHER LLP
For Complainant

Kevin G. Lauri, Esquire
JACKSON LEWIS LLP
For Respondent

Before: Janice K. Bullard
Administrative Law Judge

ORDER DENYING MOTION TO AMEND COMPLAINT AND DECISION AND ORDER DISMISSING THE COMPLAINT

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. section 1514A ("the Act") enacted on July 30, 2002. Codified at 18 U.S.C. section 1514A et seq., the Act provides the right to bring a "civil action to protect against retaliation in fraud cases" under section 806. Further, Congress has stated that the Act will be governed by 49 U.S.C. section 42121(b), which are the procedural regulations governing the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. 18 U.S.C. 1514A(b)(2)(B).

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 Act], any rule or regulation of the Securities

and Exchange Commission, or any provision of Federal law relating to fraud against shareholders...” may bring a civil action to protect against retaliation for their actions. 18 U.S.C. section 1514A(a)(1). The 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. section 78l)[“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. section 78o(d))”. 18 U.S.C. section 1514A(a).

An Administrative Law Judge with OALJ may enter summary judgment for a party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue of material fact. 29 C.F.R. section 18.40; Federal Rule of Civil Procedure 56(c). The party moving for summary judgment has the burden of establishing the “absence of evidence to support the nonmoving party’s case”. Celotex Corp. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 262 (1986). 477 U.S. 262 (1986).

I. INTRODUCTION

Procedural History

On May 11, 2004, John Roulett (“Complainant”, hereinafter) filed a complaint before the Occupational Safety and Health Administration of the U.S. Department of Labor (“OSHA”), alleging that his employer, American Capital Access Service Corp. (“Respondent”, hereinafter) retaliated against him in violation of the Act. On August 17, 2004, OSHA issued a determination dismissing Complainant’s complaint on the grounds that Respondent was not covered by the Act, and that the complaint was not timely filed. On September 15, 2004, Complainant filed a timely appeal of that determination with the Office of Administrative Law Judges for the U.S. Department of Labor (“OALJ”), and requested a formal hearing.

By Notice of Hearing issued September 22, 2004, I scheduled a hearing for October 19, 2004. During a telephonic conference with the parties on October 1, 2004, I agreed to continue the hearing pending receipt of Respondent’s motion to dismiss the complaint on jurisdictional grounds. On October 12, 2004, Respondent filed a motion to dismiss the complaint. By Order issued October 14, 2004, I continued the hearing pending my determination on the motion. On November 1, 2004, Complainant filed his opposition to Respondent’s motion, which also included a motion to amend his complaint. Respondent requested leave to submit a reply brief addressing the motion to amend the complaint. Respondent submitted the memorandum on December 6, 2004.

I have concluded that the evidence is sufficient to make a determination without hearing on the limited issue of whether Respondent is subject to the jurisdiction of Section 806 of the Act.

II. ISSUES

1. Whether Respondent is a company with a class of securities registered under

section 12 of the Securities Exchange Act of 1934 (15 U.S.C. section 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. section 78o(d), thereby subjecting it to jurisdiction under Section 806 of the Act, codified at 18 U.S.C. section 1514A(a).

2. Whether Complainant's complaint was timely filed.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

I find that there is no genuine issue of material fact regarding the issues of jurisdiction and timeliness.[1] Whether Respondent is a company within the definition of section 806 of the Act is a question of law that may be decided in response to its motion to dismiss and/or for summary decision. In addition, 18 U.S.C. § 1514(b)(2)(D) sets a statute of limitations, the violation of which bars the adjudication of a complaint under the Act.

A. Motion to Amend Complaint

Complainant moved to amend his complaint to include as a further act of discrimination the fact that he received a less favorable severance package than what Respondent offered to other individuals who did not engage in protected activity under the Act. Complainant contends that amendment is appropriate, as he recently became aware of this information, and further because he continues to be adversely affected by the difference in the severance pay in each week that it continues, constituting ongoing discrimination. Respondent objects.

The Act at 18 U.S.C. § 1514A(b)(2)(D) states:

> **Statute of Limitations.** An action under paragraph (1) [i.e., filing a complaint alleging discrimination] shall be commenced not later than 90 days after the date on which the violation occurs.

The regulations at 29 C.F.R. § 1920.103 states:

> **Filing of discrimination complaint.**
>
> (d) Time for filing. Within 90 days after an alleged violation of the Act occurs (i.e. when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file…a complaint alleging discrimination…

The Department of Labor's commentary on the regulations states:

> [T]he alleged violation is considered to be when the discriminatory decision has

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[1] I have confined my factual review to evidence material to the question of whether jurisdiction lies for Complainant's action under the Act, and have not addressed the facts pertinent to the merits of Complainant's allegations of retaliation.

> been both made and communicated to the complaint. (Citing Delaware State College v. Ricks, 449 U.S. 250, 258 (1980).) In other words, the limitations period [i.e., the 90 days] commences once the employee is aware or reasonably should be aware of the employer's decision. Equal Employment Opportunity Commission v. United Parcel Service, 249 F.3d 557, 561-62 (6th Cir. 2001)…

69 Fed. Reg. No. 163, p. 52106 (August 24, 2004).

Complainant attested in an affidavit in support of his motion that he did not learn until the third week of September 2004 that the severance package that Respondent offered him was different from that offered to terminated employees who had not engaged in protected activity under the Act. See Roulett Affidavit at ¶ 23. Complainant alleged that in September 2004, Respondent terminated employees who were in positions more subordinate than his with greater compensation upon termination. Id. at ¶ 24.

The Rules of Practice and Procedure for Administrative Hearings before OALJ permit the amendment of complaints pursuant to 29 C.F.R. § 18.5(e):

> *Amendments and supplemental pleadings.* If and whenever determination of a controversy on the merits will be facilitated thereby, the administrative law judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints, answers, or other pleadings; provided, however, that a complaint may be amended once as a matter of right prior to the answer, and thereafter if the administrative law judge determines that the amendment is reasonably within the scope of the original complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The administrative law judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved.

29 C.F.R. § 18.5(e). Accordingly, if I determine "that the amendment is reasonably within the scope of the original complaint", then an amendment may be allowed.

I find that amendment to the complaint to include a charge of discrimination related to unfavorable compensation paid to other employees who were terminated some eight months after Complainant is not appropriate. Complainant has provided no grounds to infer that those employees were similarly situated to him, and in fact, asserts that they were "in positions more subordinate than [his]…" Roulett Affidavit, ¶ 24. I find no connection between Complainant's termination and that of other employees so much later, particularly where Complainant himself admits that he held different positions from those employees. Complainant's termination is too remote from the alleged recent terminations of unnamed employees of Respondent. Because I find Complainant's termination too attenuated from terminations eight months later, his motion

to amend the complaint is DENIED.

Because I have denied the motion to amend the complaint to include charges related to disparate compensation, I decline to address whether that charge would have been construed to be timely filed.

B. Positions of the Parties

1. Complainant

Complainant asserts that by filing an initial registration statement with the SEC, Respondent is subject to the Act. Complainant further asserts that Respondent is covered under the Act because it is a company representative[2] of publicly traded companies. In support of this contention, Complainant asserts that Respondent:

1. provides insurance products for registered companies in connection with debt securities of publicly traded companies.
2. provides monitoring, maintenance and collateral review of collateralized debt obligations of registered companies.
3. provides customized solutions in the form of insurance products/structured credit derivatives for registered companies.

Complainant asserts that the date that the statutory 90 day filing period should commence is February 13, 2004, the date on which Respondent filed its registration statement. He asserts his compliant was timely, having been filed on May 11, 2004, the 90th day after February 13, 2004. Complainant argues in the alternative that equitable tolling is appropriate, because Respondent gave him no reason for his abrupt termination, and he only realized after Respondent filed its registration statement that he had been terminated because of his prior protected activities. In the alternative, Complainant asserts that the statutory filing period should be tolled for 45 days, which is the consideration period set forth in the release agreement Respondent sent to Complainant on January 20, 2004.

2. Respondent

Respondent contends that jurisdiction under the Act does not lie because it has never held a class of securities registered under section 12 of the SEC Act of 1934 and has never been required to file reports under section 15(d) of the SEC ACT of 1934. Respondent admits that it filed a registration statement with the SEC on February 13, 2004 that was subsequently withdrawn. Respondent argues that since the statement was withdrawn, the registration never became effective and therefore, Respondent's securities were never registered. Even if the withdrawn application had been approved by SEC, Respondent argues that on the date that Complainant was terminated, January 20, 2004, it had not registered its securities. Respondent maintains that at no time has it offered securities for sale to the public on any exchange.

[2] The regulations define "company representative" as "any officer, employee, contractor, subcontractor, or agent of a company." 29. C.F.R. § 1980.101.

Respondent rejects as over-broad Complainant's contention that its activities are sufficient to render it a "company representative", and therefore, subject to the Act.

Respondent maintains that even if it were subject to coverage under the Act, Complainant did not meet the statutory time within which to file the complaint. Respondent contends that Complainant learned of his termination on January 20, 2004 but did not file his complaint until May 11, 2004, well over 90 days later. Respondent contends that even if circumstances supported equitable tolling, that alternative is not appropriate under the Act.

C. Factual Background

Because I am issuing a summary decision without hearing, I accept all of Complainant's factual allegations as true.

1. **Evidence of Record**

In addition to his pleadings and complaint, Complainant submitted evidence summarized as follows:

CX-1 Affidavit of John Roulett
CX-2 Performance review for period 4/1/01 to 12/31/01
CX-3 Letters of January 26, 2004 from Mr. Roulett to Michael Saltz, Steve Schrager, Reuben Selles, Bill Tomljanovic, Maryann Muessel, Ted Gilpin
CX-4 Form S-1 Registration Statement under SEC of 1933 by Respondent dated February 13, 2004
CX-5 Article of February 20, 2004 from "The Bond Buyer online"
CX-6 Fax of May 6, 2004 regarding article of May 6, 2004 by Darrell Preston
CX-7 Article of May 7, 2004 from "The Bond Buyer online"
CX-8 Article of May 19, 2004 from "The Bond Buyer"
CX-9 Letter of July 23, 2004 to SEC from Respondent, requesting withdrawal of Registration Statement, pursuant to Rule 477(a) of the Securities Act of 1933
CX-10 January 20, 2004 letter of release
CX-11 April 27, 2004 Letter from Respondent's counsel

In addition to pleadings and documents related to Complainant's complaint before OSHA, Respondent submitted the following evidence:

RX-1 January 20, 2004 letter of release
RX-2 Affidavit of Nora J. Dahlman

2. **Statement of the Facts**

Complainant has at least twenty years of experience in the securities markets with a specialty in the areas of institutional sales and municipal bond products. He holds NASD Series 7 and Series 63 licenses. Roulett Affidavit at ¶ 2. He worked for Respondent for almost five

years as a Director and Manager of the Institutional Products/Secondary Markets Group. Id. at ¶ 2 and 3. Respondent is a company that provides services in the financial marketplace that may generally be described as (a) insurance products for registered companies in connection with debt securities of publicly traded companies; (b) monitoring, maintenance and collateral review of collateralized debt obligations of registered companies; (c) customized solutions in the form of insurance products/structured credit derivatives for registered companies. Roulett Affidavit at ¶ 12; CX 4.

Complainant was rated as exceeding expectations in his most recent performance evaluation dated February 5, 2002. CX 2. During the course of his employment, Complainant became aware that Respondent was engaging in certain improper activities, and in mid-2003, informed Steve Schrager, Managing Director of National Sales and the Secondary Market Department, of the activities that he believed were illegal, to wit:

(a) Respondent was improperly using Surveillance Analysts as underwriters for Secondarily Insured deals, thereby violating a requirement that analysts be independent from the underwriting process.
(b) Respondent imposed a revenue quota on underwriting activities
(c) Respondent pressured Surveillance Analysts to change their opinions on failing credits that should be or had been listed on a list of poorly performing credits, with the effect that buyers would not be exposed to long list of poor performing investments
(d) By pressuring employees to change the status of its credits, Respondent deceived investors and the public regarding the risks of investing in the company.

Roulett Affidavit at ¶ 6. In addition to the above cited improprieties, Complainant had also informed the Director and Manager of the Surveillance Department beginning in late 2001 that Respondent utilized an improper method of calculating the average life of a bond with respect to the secondary market, thereby distorting the final maturity of secondarily insured policies and shortening the life of exposure and risk of those bonds. Id. at ¶ 7. Respondent's practices deviated from standard industry and produced false representations regarding Respondent's products. Id. at ¶ 8.

On January 20, 2004, Complainant was terminated without warning, and by correspondence to several company officials, sought to learn the reason for his termination. CX 10; CX 3. No representative of the company provided a reason for his termination. Roulett Affidavit at ¶ 9. Complainant became aware that he had been terminated because of his protected activities after Respondent filed a Registration Statement with SEC (CX 4), and after a series of terminations and resignations of key personnel occurred. Id. at ¶ 10. Complainant believed that in preparation for its initial public offering, Respondent removed employees who had detailed knowledge of the fundamental workings of the Company, and thereafter also would be subject to the Act's requirements for financial and other disclosures. Id. at ¶ 11.

Respondent had experienced capital concerns, and in its Registration Statement with the SEC, proposed to raise capital by selling registered securities through an initial public offering

(IPO). Id. at ¶ 15; CX 4. Adequate capital was necessary to avoid a downgrade in its business rating (Fitch Ratings), which would effect it obligations and the obligations of registered issues backed by Respondent's produces. Id. at ¶ 16. Immediately before filing its registration statement, Respondent's Controller left employment with the company, and on April 30, 2004 and May 6, 2004, two company officials resigned from their positions with Respondent. The company delayed its IPO at about that time, and experienced a downgrade in its Fitch Ratings. Subsequently, Respondent received capital from private financing, and requested that its registration statement be withdrawn. Roulett Affidavit at ¶ ¶ 17 – 20.

Respondent's filing of a Registration Statement with the SEC was the initial step in the process of putting forth an IPO. Dahlman Affidavit at ¶ 7. The request for registration was withdrawn and Respondent has never offered securities for sale to the public on any exchange. Id. Respondent has at no time since January 20, 2004 been a publicly traded company that has registered securities registered under section 12 of the SEA of 1934 nor a company required to file reports under section 15(d) of the SEA of 1934. Id. at ¶ 8.

D. Discussion

1. **Jurisdiction**

The relevant whistleblower provisions of the Act cover companies "with a class of securities registered under section 12 of the Securities Exchange Act of 1934" or "companies required to file reports under section 15(d) of the Securities Exchange Act of 1934[.]" Section 12 of the Securities Exchange Act of 1934 states:

> "If the exchange authorities certify to the Commission [SEC] that the security has been approved by the exchange for listing registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine . . ."

15 U.S.C. 781 § 12. The statute clearly contemplates that a registration shall not become effective until it is approved by the relevant exchange authorities who then must certify to the SEC that the security has been approved. 15 U.S.C. 781 § 12.

In the instant case, it is undisputed that Respondent requested withdrawal of its registration before any approval by an exchange or the SEC was effected. Since section 12 requires such approval before registration can become effective, Respondent's filing of the registration statement and subsequent request for withdrawal would not qualify as effective registration under the Act. I find that the evidence establishes that Respondent has never registered a class of securities under section 12 of the 1934 Act.

Excepting its creativity, I find little merit in Complainant's argument that the Act extends to Respondent's activities because it is a "company representative" for publicly traded companies. The regulations define "company representative" as "any officer, employee, contractor, subcontractor, or agent of a company." 29. C.F.R. § 1980.101. The fact that publicly

traded companies rely upon Respondent's services and purchase its products does not make Respondent their contractor, subcontractor or agent. I acknowledge that Respondent's activities have the potential to effect the financial welfare of publicly traded companies with which it does business. However, any product or service that a company purchases creates the potential for profit or loss for the company that purchases it. The Act provides specific requirements for its coverage, which I decline to expand to a non-publicly traded company solely because it engages in financial business with publicly traded companies. In fact, coverage under the Act has been found not to lie in circumstances where companies are much closer related than those proposed by Complainant, such as where a subsidiary of a publicly traded company is not itself publicly traded. See, *Klopenstein v. PCC Flow Technologies Holdings, Inc. and Allen Parrott*, 2004-SOX-11 (ALJ July 6, 2004); *Powers v. Pinnacle Airlines, Inc.*, 2003-SOX-18 (ALJ March 5, 2003). I find that coverage of the Act cannot be established on these broad grounds.

Moreover, even if I were to conclude that the application had been approved by SEC, Respondent did not file it until February 13, 2004, well after Complainant was terminated on January 20, 2004. There is no evidence to suggest that Respondent had sought to register an application during the tenure of Complainant's employment. As I have stated, the filing of the application alone is insufficient to effect the necessary registration to bring Respondent within the coverage of the Act. The Act may not be applied retroactively to confer coverage before a company meets the jurisdictional requisites. *McIntyre v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 2003-SOX-23 (ALJ January 16, 2004), *Gilmore v. Parametric Technology*, 2003-SOX-00001 (ALJ February 6, 2003), and *Kunkler v. Global Futures & Forex, Ltd.*, 2003-SOX-00006 (ALJ April 24, 2003).

In consideration of the above, since Respondent does not meet the requirements of the first category of employers covered under the Act, in order for jurisdiction to lie, it must be established that Respondent is required to file reports under section 15(d) of the SEA of 1934.

The statute at section 15(d) directs:

> [e]ach issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964 and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to

which the registration statement relates are held of record by less than three hundred persons...

Although the parties do not address this detail, it appears from the face of the documentation that Respondent's registration statement with the Securities and Exchange Commission ("Commission") was filed pursuant to the Securities Exchange Act of 1933, 15 U.S.C. section 77a et seq. CX 4. However, because Respondent sought to withdraw its registration, and indeed, did not consummate an IPO, it was not a registered issuer, and did not incur the obligation to comply with reporting requirements of section 15(d) of the SEA of 1934. 15 U.S.C. section 15(d)(1).

Accordingly, in consideration of the factual assertions of the parties and their arguments, I find that Respondent does not have a class of securities registered under section 12 of the SEA of 1934, nor is it required to file reports under section 15(d) of the SEA of 1934. Therefore, Respondent is not subject to the provisions of section 806 of the Act, and Complainant may not bring an action for relief thereunder.

2. **Timeliness of the Complaint**

Assuming that the Act applied to Respondent, I find that Complainant's complaint is barred because it is untimely. The Act provides that a whistleblower claim must be filed "within 90 days after an alleged violation of the Act occurs (i.e. when the discriminatory decision has been both made and communicated to the complainant[.])" 29 CFR § 1980.103 (d). Respondent argues that Complainant has exceeded the 90 day filing requirement since he learned of his termination on January 20, 2004 and filed his complaint on May 11, 2004, well over 90 days later. Complainant asserts that the relevant date for the start of the 90 day period should be February 13, 2004, the date on which Respondent filed its registration statement. Moreover, Complainant points to the shift in Respondent's upper management as further support of his contention that he was terminated as part of a "housecleaning" effort by Respondent so that its IPO would not be jeopardized by employees with familiarity with alleged improper acts.

I am unable to accord full weight to Complainant's explanation for waiting until May to file his complaint because that argument is inconsistent with other evidence. Complainant asserted that he had repeatedly advised company officials that certain of Respondent's practices were improper, if not illegal. Roulett Affidavit at ¶¶ 6, 7, 8. He contended that he was terminated without explanation on January 20, 2004, and his efforts to ascertain a reason for his termination were ignored by Respondent and its officials. Roulett Affidavit at ¶ 9; CX 3. Yet, Complainant also contends that it was not until he learned of Respondent's registration, and the subsequent departure of company officials, that he associated his termination with his protected activity. Although I can accept that this knowledge may support his belief that his termination was due to his protected activity, I find it unreasonable to accept that those circumstances triggered his knowledge of the nexus between the two. Such a conclusion is inconsistent with Complainant's persistent involvement in protected activity, and his unanswered requests for an explanation for his termination.

Moreover, Complainant does not suggest that his termination on January 20, 2004 was ambiguous in any manner. The statute of limitations begins to run when the employee is made aware of the employer's decision to terminate him. *Lawrence v. AT&T Labs,* 2004-SOX 00065 (ALJ Sept. 9, 2004). The Act and regulations are clear that the statutory period within which a complaint must be filed begins on the date on which the alleged discriminatory practice occurred. I find that the evidence in this case demonstrates that the statute of limitations for filing a complaint commenced when Complainant was terminated on January 20, 2004.

Complainant's arguments for equitable tolling fail as well. There is no evidence of intentional or misleading conduct on the part of the Respondent that would have impeded Complainant's ability to file his complaint within the statutory period. Nor do I find the statute of limitations is tolled by the 45 day period of consideration set forth in the release signed by Complainant. CX 11, RX 1. Furthermore, there is no statutory mandate in the Act for such tolling.

Accordingly, I find that Complainant's complaint is not timely filed.

IV. CONCLUSION

Based on the foregoing, I find that Respondent does not have a class of securities registered under section 12 of the SEA of 1934, nor is it required to file reports under section 15(d) of the SEA of 1934. Accordingly, Respondent is not subject to the provisions of section 806 of the Act, and Complainant may not bring an action for relief thereunder. Further, I find that the complaint filed on May 11, 2004 is barred because it was not timely filed within the 90-day statute of limitations imposed by 18 U.S.C. § 1514A(b)(2)(D). The statutory period began when on January 20, 2004, Complainant was terminated from his employment with Respondent.

ORDER

For the reasons stated herein, Complainant's motion to amend his complaint is DENIED.

ORDER

IT IS HEREBY ORDERED that the instant complaint be dismissed.

A

Janice K. Bullard
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"), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., 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 in "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).