



**In the Matter of:**

**LUCA CONCONE,**

**ARB CASE NO. 05-038**

**COMPLAINANT,**

**ALJ CASE NO. 05-SOX-6**

**v.**

**DATE: May 13, 2005**

**CAPITAL ONE FINANCIAL CORPORATION;  
CAPITAL ONE BANK (EUROPE) PLC;  
CAPITAL ONE FINANCIAL INTERMEDIARY SPA,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Ramyar Moghadassi, Esq., *Moghadassi Associates, New York, New York***

***For the Respondents:***

**Barbara L. Johnson, Esq., *Paul, Hastings, Janofsky & Walker LLP,  
Washington, D. C.***

**FINAL ORDER APPROVING WITHDRAWAL OF OBJECTIONS  
TO THE SECRETARY'S ORDER AND DISMISSING THE APPEAL**

This case arose under the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX),<sup>1</sup> and its implementing regulations<sup>2</sup> when the Complainant, Luca Concone, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA)<sup>3</sup>

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2003).

<sup>2</sup> 29 C.F.R. Part 1980 (2004).

<sup>3</sup> See 29 C.F.R. § 1980.104.

alleging that the Respondents terminated his employment in violation of Section 806, SOX's employee protection provision. OSHA denied the complaint. Concone objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup>

On December 3, 2004, the ALJ issued a Recommended Decision and Order Dismissing the Complaint (R. D. & O.). The ALJ found that Concone was not covered by SOX's employee protection provisions because the Respondents employed him outside of the United States. R. D. & O. at 6. Concone filed a petition for review of the R. D. & O. with the Administrative Review Board.<sup>5</sup> The Board issued a Notice of Appeal and Order Establishing Briefing Schedule.

On April 21, 2005, the parties filed a Joint Stipulation of Dismissal stating:

Complainant Luca Concone and Respondents Capital One Financial Corporation, Capital One Bank (Europe) plc, and Capital One Financial Intermediary S.p.A., by and through their undersigned counsel, hereby stipulate and agree to dismiss this action, with prejudice, in its entirety; each party to bear its own costs and attorneys' fees.

Attached to the Joint Stipulation of Dismissal was a draft Order dismissing all claims with prejudice. On April 25, 2005, the Board issued an Order Requiring Clarification. We noted that:

The implementing regulations include two procedures for terminating a SOX proceeding at the Board once a party has filed objections to the findings or preliminary order: 1) Before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal of objections with the Board;<sup>[6]</sup> 2) The parties may settle the case if the participating parties agree to a settlement and the Board approves the settlement. In cases of settlement, "A copy of the settlement will be filed with the . . . Board . . . ."<sup>[7]</sup>

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<sup>4</sup> See 29 C.F.R. § 1980.106.

<sup>5</sup> The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under SOX to the Administrative Review Board. Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). See also 29 C.F.R. § 1980.110.

<sup>6</sup> 29 C.F.R. § 1980.111(c).

<sup>7</sup> 29 C.F.R. § 1980.111(d)(2).

Therefore, we ordered the parties to reply to this Order with either a withdrawal of objections or if the parties have settled the case, a copy of the settlement for the Board's approval.

On May 6, 2005, the parties filed a Joint Motion to Withdraw Joint Stipulation of Dismissal, and the Complainant filed a Notice of Withdrawal of Objections. Accordingly, we **APPROVE** the withdrawal of objections and **DISMISS** this appeal with prejudice.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeal Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeal Judge**