



In the Matter of:

MICHAEL E. MOZINGO,

ARB CASE NO. 07-040

COMPLAINANT,

ALJ CASE NO. 07-SOX-00002

v.

DATE: February 8, 2007

**THE SOUTH FINANCIAL GROUP, INC.,
AND ITS WHOLLY-OWNED SUBSIDIARIES,
CAROLINA FIRST BANK, AND CAROLINA
FIRST SECURITIES; UVEST FINANCIAL
SERVICES GROUP, INC.; EDWARD
HAUSGEN; ROCCO QUINTANA;
THOMAS RYAN; WILLIAM HANN;
SCOTT PLYLER; AND JAMES TERRY,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Terry Ann Rickson, Esq., Charleston, South Carolina

For the Respondent:

**J. Theodore Gentry, Esq., Wyche Burgess Freeman & Parham, P.A.,
Greenville, South Carolina**

FINAL DECISION AND ORDER DISMISSING APPEAL

The Complainant, Michael E. Mazingo, filed a complaint on July 7, 2006, under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII

of the Sarbanes-Oxley Act of 2002 (SOX),¹ and its implementing regulations² with the Department of Labor's Occupational Safety and Health Administration (OSHA). Mzingo alleged that the Respondents, South Financial Group, et al., retaliated against him in violation of SOX's whistleblower protection provisions. OSHA dismissed the complaint on September 22, 2006.

Mzingo requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On December 6, 2006, a Department of Labor Administrative Law Judge issued an Initial Decision and Order Granting Respondents' Motion for Summary Decision (I. D. & O.).

Mzingo filed a petition requesting the Administrative Review Board to review the ALJ's I. D. & O. on December 27, 2006, and the Respondents filed an Opposition to Complainant's Petition for Review on December 28, 2006. The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX.³

On January 8, 2007, the Board received Mzingo's Notice of Intent to File Lawsuit in Federal District Court. If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.⁴ Accordingly, we ordered the parties to show cause no later than January

¹ 18 U.S.C.A. § 1514A (West Supp. 2003). Title VIII of Sarbanes-Oxley is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806 covers companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C § 78l, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies. Section 806 protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. 68 FR 31864 (May 28, 2003).

² 29 C.F.R. Part 1980 (2006).

³ Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a)(2006).

⁴ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. By the time the Board received the Complainant's petition for review there were only 4 days remaining in the 180-

30, 2007, why the Board should not dismiss the appeal filed by the Complainant pursuant to 29 C.F.R. § 1980.114.

The Respondents replied to the Board's order stating that they knew of no reason that the Board should not dismiss Mozingo's appeal. Mozingo's response was in the form of a Motion to Dismiss Complaint Without Prejudice. Mozingo's motion is not responsive to the Board's order requesting the parties to show cause why we should not dismiss Mozingo's appeal. Furthermore, Mozingo cited to no statutory or regulatory basis, nor proffered any grounds for dismissing the complaint without prejudice. Accordingly, we **DENY** his motion. However, because Mozingo has opted to pursue his SOX complaint in district court rather than at the Board, we **DISMISS** his appeal.

SO ORDERED.

DAVID G. DYE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

day period. Thus as is usually the case, the 180-day period for deciding the case had nearly expired before the Complainant filed his petition with the Board.