

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 January 2009

CASE NO.: 2009-SOX-8

IN THE MATTER OF

NANCY O'MALLEY

Complainant

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA)

and

USAA FEDERAL SAVINGS BANK (USAA FSB)

Respondents

DECISION AND ORDER OF DISMISSAL

This case arises under the Sarbanes-Oxley Act of 2002, technically known as the Corporate and Criminal Fraud Accountability Act, P.L. 107-204 at 18 U.S.C. §1514A et seq., (herein the Act), which provides protection for whistleblowers who are employees of publicly traded companies by permitting them to file a complaint with the Secretary of Labor. However, the Act further provides that the complainant may file a complaint for **de novo** review in the appropriate United States District Court "if the Secretary [of Labor] has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the [complainant]." 18 U.S.C. §1514A(b)(1).

On November 25, 2008, Complainant advised since no final decision has been entered in this matter within 180 days of the filing of her complaint, she intended to pursue her case in the appropriate U.S. District Court. On December 22, 2008, Complainant filed a "Motion to Stay Proceedings" pending

resolution of the forum for Complainant's claims under binding arbitration or removal to the appropriate U.S. District Court. An Order Staying the requirements of the Pre-Hearing Order issued on January 6, 2009.

On January 12, 2009, Complainant filed a "Motion to Close Proceeding" in view of her filing her claim, pursuant to 29 C.F.R. §1980.114, for **de novo** review with the American Arbitration Association which Complainant and Respondents agree will sit in lieu of the U.S. District Court.

On January 26, 2009, a conference call was held with the parties to confirm that the SOX claims presented herein will be resolved between the parties through binding arbitration and with the instant order the undersigned will be deprived of further jurisdiction in this matter.

Accordingly, the pending proceeding before this office is hereby closed and **DISMISSED** without prejudice

The formal hearing scheduled for February 17, 2009 in San Antonio, Texas is **CANCELLED**.

ORDERED this 30th day of January, 2009, at Covington, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. See 29 C.F.R. §1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object.

Generally, you waive any objections you do not raise specifically. See 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).