

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 February 2007

Case No.: 2006-SOX-00105

In the Matter of:

KIMBERLY SHAWN DAVIS,

Complainant,

v.

**WEST CORPORATION,
WEST ASSET MANAGEMENT, INC., &
ASSET DIRECT MORTGAGE, LLC,**

Respondents.

ORDER OF DISMISSAL

This case arises from an alleged violation of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley). Sarbanes-Oxley, under Section 806, provides the right to bring a “civil action to protect against retaliation in fraud cases.” The Act affords protection from employment discrimination to employees of companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (Securities Exchange Act) and companies required to file reports under Section 15(d) of the Securities Exchange Act.

Specifically, the law protects a so-called whistleblower employee from retaliatory or discriminatory actions by his employer after the employee provides information to the employer, a federal agency, or Congress relating to alleged violations of 18 U.S.C. §§ 1341, 1343, 1344, 1348, or any provision of Federal law relating to fraud against shareholders. All actions brought under Section 806 of Sarbanes-Oxley are governed by 29 C.F.R. § 1980 (2004).

Complainant in the present case filed a Complaint with the Occupational Safety and Health Administration (OSHA) on February 15, 2006. In her Complaint, Ms. Davis alleged that Respondents, West Corporation (West), West Asset Management, Inc. (WAM) and Asset Direct Mortgage, LLC (ADM), discriminated against her in violation of Section 806 of Sarbanes-Oxley.

Under Section 806 of Sarbanes-Oxley, complaints of discrimination by whistleblowers must be filed with the Department of Labor. However, if the Secretary 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, then the complainant may remove the case to Federal District Court for a de novo proceeding. 29 C.F.R. § 1980.114.

In the present case, the Department of Labor failed to issue a final decision within 180 days of the filing of Ms. Davis's complaint. The Complainant has therefore elected to remove her case to the United States District Court for the Northern District of Georgia.

Complainant notified this Office of her desire to proceed in Federal District Court by letter dated January 30, 2007. By facsimile sent on February 21, 2007, the Complainant informed the undersigned that on that same date she filed her Complaint in the United States District Court for the Northern District of Georgia.

Since this case has been removed to Federal Court, this Office no longer has jurisdiction over it. Therefore,

IT IS ORDERED that this case before the Department of Labor is dismissed.

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RICHARD K. MALAMPHY
Administrative Law Judge

RKM/KBE/jcb
Newport News, Virginia

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, Room S-4309, 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