

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 28 April 2006

CASE NUMBER 2006-STA-00014

In the Matter of

FRANCIS HOPKINS,
Complainant,

v.

SUGAR MOUNTAIN TRANSPORTATION CO. and LARRY TACHOVSKY,
Respondents.

RECOMMENDED DECISION AND ORDER DISMISSING REQUEST FOR HEARING

This matter arises from a September 2, 2005 complaint by Francis Hopkins ("the Complainant") under the whistleblower provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (hereinafter "the STAA" or "the Act") and implementing regulations set forth at 29 C.F.R. Part 1978. In brief, the complaint alleges that the Respondents terminated the Complainant's employment at Sugar Mountain Transportation Company in retaliation for complaints that he had made concerning the safety of the vehicle he had been assigned to drive. In a statement of findings issued on February 10, 2006, a Regional Administrator for the Occupational Safety and Health Administration concluded that the complaint was without merit. Thereafter, the Complainant filed a timely request for a hearing before the Office of Administrative Law Judges. In a Notice of Trial issued on March 3, 2006, the parties were informed that a trial on this matter would be held in Portland, Oregon, on June 7, 2006.

On April 17, 2006, the Respondent submitted a letter asking that this matter be dismissed because the Complainant had failed to submit a Pre-Trial Statement by the April 14, 2006 deadline set forth in the Pre-Trial Order attached to the Notice of Trial. Although the Complainant has not filed a response to that request, on April 26, 2006, the Complainant did submit a motion asking that the proceeding be dismissed. As grounds for this request, the Complainant represented that he has learned that Respondent Larry Tachovsky is insolvent and will be closing Sugar Mountain Transportation Company.

Under the provisions of 29 C.F.R. § 1978.111(c) a party may withdraw objections to a Regional Administrator's findings at any time before the findings become final. In this case the findings of the Regional Administrator have not yet become final, so the Complainant's request to dismiss this proceeding is permissible. Moreover, the Complainant had provided a valid reason for seeking dismissal of the proceeding. Accordingly, the Complainant's request will be granted.

ORDER

The Complainant's request that this proceeding be dismissed is hereby granted. Pursuant to the provisions of 29 C.F.R. §1978.111(c), the statement of findings of the Regional Administrator are hereby affirmed.

A

Paul A. Mapes
Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington D.C. 20210. *See* 29 C.F.R. §1978.109(a); 61 Fed. Reg. 19978 (1996). The parties may file with the Administrative Review Board briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Administrative Review Board notifies the parties