



In the Matter of:

SYED M. A. HASAN,

ARB CASE NO. 01-007

COMPLAINANT,

ALJ CASE NO. 2000-ERA-10

v.

DATE: May 30, 2001

**STONE & WEBSTER ENGINEERS
AND CONSTRUCTORS, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

Syed M.A. Hasan, *pro se*, Madison, Alabama

For the Respondent:

Michael T. McNerny, *Stone & Webster Engineers & Constructors, Inc.,
Boston, Massachusetts*

REMAND ORDER

On December 1, 1999, Syed Hasan filed a complaint alleging that Respondent violated the whistleblower protection provisions of the Energy Reorganization Act (“ERA”) under 42 U.S.C.A. §5851 (West 1995). Ultimately, the case was referred to an Administrative Law Judge (“ALJ”) who recommended that this matter be dismissed on the grounds that Hasan failed to allege any set of facts upon which relief could be granted. ALJ Recommended Decision and Order Dismissing Claim, Oct. 5, 2000 (“RD&O”). Hasan appealed asserting, in part, that the ALJ erred in issuing a decision in this case because Respondent had, prior to issuance of the ALJ’s RD&O, filed for bankruptcy and, as a result all administrative proceedings against the company are automatically stayed pursuant to 11 U.S.C. §362.

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary’s Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

Respondent acknowledges that on June 2, 2000, it filed a petition for protection from creditors under Chapter 11 of the United States Bankruptcy Code. Respondent further acknowledges:

The automatic stay provisions of the Bankruptcy Code, 11 U.S.C. §362, require that the administrative proceedings against the Debtor are stayed pending termination of the bankruptcy proceeding or an order from the Bankruptcy Court lifting the stay. No such termination has occurred in the Stone & Webster proceeding. This matter should accordingly be stayed before the Administrative Law Judge.

Respondent's Reply Brief on Claimant's Appeal at 3.

Pursuant to 11 U.S.C. §362(a)(1), the filing of a petition for bankruptcy under Chapter 11 operates as a stay of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." Although the stay by its statutory terms operates against "the commencement or continuation" of administrative proceedings, we have held that the automatic stay provisions of §362 also apply to the dismissal of the case. *Haubold v. KTL Trucking Company*, ARB No. 00-065, ALJ No. 2000-ERA-35, slip op. at 3-4 (ARB Aug. 10, 2000). Thus, the ALJ's RD&O is rendered null and void by operation of law.

Accordingly, the matter is still before the ALJ where it will remain on the docket until the bankruptcy case is closed, dismissed, or discharge is granted or denied or until the bankruptcy court lifts the stay, at which time the ALJ may then continue the proceedings to resolve the matter before him.

SO ORDERED.

E. COOPER BROWN
Member

RICHARD A. BEVERLY
Alternate Member