



In the Matter of:

AMY STROUPE,

ARB CASE NO. 10-086

COMPLAINANT,

ALJ CASE NO. 2008-SOX-047

v.

DATE: October 29, 2010

**BRANCH BANKING &
TRUST COMPANY,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Jill S. Cox, Kilpatrick Stockton LLP, Winston-Salem, North Carolina

Before: Paul M. Igasaki, Chief Administrative Appeals Judge, and Luis A. Corchado, Administrative Appeals Judge

FINAL DECISION AND ORDER DISMISSING APPEAL

The Complainant, Amy Stroupe, filed a complaint alleging that the Respondent, Branch Banking & Trust Company (BB&T), retaliated against her in violation of the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX) and its implementing regulations.¹ A Department of Labor Administrative Law Judge (ALJ)

¹ 18 U.S.C.A. § 1514(A) (Thomson/West Supp. 2010); 29 C.F.R. Part 1980 (2010). Sarbanes-Oxley's Section 806 prohibits covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information to a covered employer, a federal agency or Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C.A. §§ 1341

found that Stroupe established by a preponderance of the evidence that she engaged in protected activity and that BB&T retaliated against her in response to that activity. The ALJ ordered BB&T to reinstate her to her previous position and awarded damages. BB&T petitioned the Administrative Review Board to review the ALJ's Decision and Order.²

On, April 30, 2010, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule ordering BB&T to file an initial brief in this case "on or before **May 31, 2010.**" The Board's Order specifically provided, "If the Respondent fails to file the initial brief on time, the Board may dismiss the Respondent's appeal. *See, e.g., McQuade v. Oak Ridge Operations Office*, ARB No. 02-087, ALJ Nos. 1999-CAA-7 to 10 (ARB Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076, ALJ No. 2001-CAA-18 (ARB Oct. 9, 2002)."

On May 24, 2010, the Board issued an order granting BB&T's motion for an enlargement of time to file its opening brief. Under the terms of the Board's order, BB&T's brief was due on June 30, 2010. BB&T did not file an initial brief as specified in the Board's order.

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."³ This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.⁴ Accordingly, on October 8, 2010, the Board issued an order requiring

(mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders.

² The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the SOX. Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

³ *See e.g., Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁴ *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). *See also Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *cf. Fed. R. App. P. 31(c)* (allowing dismissal as sanction for failure to file a conforming brief); *Fed R. App. P. 41(b)* (permitting courts to dismiss a complaint for failure to comply with court orders).

BB&T to show cause no later than October 26, 2010, why we should not dismiss its appeal because it has failed to timely file its opening brief.

In a letter dated October 22, 2010, BB&T responded to the Board's show cause order. The letter states, "Please be advised that BB&T does not intend to further pursue its appeal in this matter and consents to its dismissal." Accordingly, we **DISMISS** BB&T's appeal. Further, the ALJ's April 1, 2010 Decision and Order becomes the final order of the Secretary of Labor in this case.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge