



EDWIN MOLDAUER,

ARB CASE NO. 09-042

COMPLAINANT,

ALJ CASE NO. 2008-SOX-073

v.

DATE: March 9, 2009

**CONSTELLATION BRANDS, INC. and
CANANDAIGUA WINE CO. INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner:

Edwin Moldauer, *pro se*, Beer Sheva, Israel

For Respondent:

**Paul Zieff, Esq., Rogers, Joseph, O'Donnell & Phillips, San Francisco,
California**

FINAL DECISION AND ORDER DISMISSING APPEAL

On June 25, 2008, the Complainant, Edwin Moldauer, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration alleging that the Respondents, Constellation Brands, Inc. and Canandaigua Wine Co., had retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ On December 29, 2008, a Department of Labor Administrative Law Judge issued an Order Dismissing Complaint in this case. Moldauer filed a petition for review with the Administrative Review Board on January 9, 2009.

¹ 18 U.S.C.A. § 1514A (West 2002).

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX.²

On January 13, 2009, the Board received a “notice” from Moldauer announcing his intention to bring an action in federal court, as authorized by 29 C.F.R. § 1980.114(a), for de novo review of the claim currently pending before the Board. If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have jurisdiction over the action without regard to the amount in controversy.³ Accordingly, we ordered the parties to show cause no later than March 4, 2009, why the Board should not dismiss Moldauer’s appeal pursuant to 29 C.F.R. § 1980.114.

On March 4, 2009, the Respondents filed a Response to the Order to Show Cause. The Respondents averred that Moldauer had delayed the ALJ proceedings in bad faith and thus the Board should not dismiss his appeal. In support of its motion the Respondents detailed the procedural history of this case before the ALJ. In particular, the Respondents noted that Moldauer, who is pro se, did not timely respond to an Order to Show Cause and then requested a stay of proceedings. When the ALJ chose to give Moldauer another chance to reply to the Order to Show Cause, Moldauer reiterated his position that the case should be stayed. Although we would agree with the Respondents that Moldauer should have timely responded to the ALJ’s Show Cause Order and that Moldauer’s decision to request a stay rather than to respond to the ALJ’s Show Cause Order was “ill-advised,” the Respondents have cited to no authority supporting their argument that a failure to timely respond to a single order or that one improvident filing constitutes bad faith. Accordingly, we **DISMISS** Moldauer’s appeal pursuant to 29 C.F.R. § 1980.114.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² Secretary’s Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110(a)(2006).

³ 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is the usual case, by the time the Board received the petition for review, the 180-day period for deciding the case had already expired.