



**In the Matter of:**

**JONATHAN M. ZANG,**

**ARB CASE NO. 08-078**

**COMPLAINANT,**

**ALJ CASE NO. 2007-SOX-027**

**v.**

**DATE: August 26, 2008**

**FIDELITY MANAGEMENT &  
RESEARCH CO., FMR CO., FMR CORP.,  
FIDELITY SELECT PORTFOLIOS, and  
FIDELITY TREND FUND,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainants:*

**Alan D. Rose, Esq., *Rose, Chinitz & Rose*, Boston, Massachusetts**

*For the Respondents:*

**David A Kotler, *Dechert LLP*, Princeton, New Jersey**

### **FINAL DECISION AND ORDER**

Jonathan M. Zang, the Complainant, filed a petition requesting the Administrative Review Board to review a Decision and Order Granting Summary Decision Dismissing Complaint issued by a Department of Labor Administrative Law Judge on March 27, 2008, in this case arising under the whistleblower provisions of the Sarbanes-Oxley Act of 2002 (SOX).<sup>1</sup> On April 16, 2008, Zang filed a notice of substitution of counsel and a

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2005).

Notice of Intent to File Sarbanes-Oxley Complaint in United States District Court. Accordingly, we ordered the parties to show cause no later than May 15, 2008, why the Board should not dismiss Zang's appeal pursuant to 29 C.F.R. § 1980.114.

The Respondents filed an opposition to the Order to Show Cause indicating that they intended to file a motion with the district court to dismiss Zang's complaint with prejudice or in the alternative "to exercise its inherent authority to stay the action and issue a mandamus to the Department of Labor to issue a ruling on Zang's appeal of the ALJ's decision dismissing his complaint." Because we believed that the district court's ruling was imminent and in the interest of judicial economy, we held this case in abeyance pending the district court's ruling on the Respondents' motion.

It has now become apparent that the district court will not rule on the Respondents' motion imminently. 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.<sup>2</sup> While the Respondents argued that Zang "requested and obtained a significant delay in the hearing schedule,"<sup>3</sup> they have not established that Zang acted in bad faith. Accordingly, because Zang has exercised his right to remove his SOX case to district court pursuant to 29 C.F.R. § 1980.114, and the Respondents have not established that Zang has acted in bad faith to delay the proceedings, we **DISMISS** Zang's SOX appeal.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>2</sup> 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.

<sup>3</sup> Respondents' Memorandum Showing Cause Why Zang's Appeal Should Not Be Dismissed at 2.