



Issue Date: 15 July 2005

In the Matter of:

ANDREAS FIEDLER,
Complainant

Case No. 2005-SOX-38

v.

COMPASS GROUP USA, INC.,
d/b/a EUREST DINING SERVICES, INC.,
Respondent

Appearances:

Andreas Fiedler
Chesapeake, Maryland
Pro se Complainant

Eric Savage, Esq.
Littler Mendelson
Newark, New Jersey
For the Respondent

Before: Alice M. Craft
Administrative Law Judge

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION AND DISMISSING COMPLAINT**

This proceeding arises from a claim of whistleblower protection under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. section 1514A ("Sarbanes-Oxley" or "the Act"), enacted on July 30, 2002. The Act and implementing regulations at 29 CFR Part 1980¹ prohibit retaliation by publicly-traded companies against their employees who provide information to their employers, a federal agency, or Congress, alleging violation of any Federal law relating to fraud against shareholders. In this case, the Complainant, Andreas Fiedler, alleges that his employer, Compass Group, USA, Inc., doing business as Eurest Dining Services, Inc., terminated him because he reported

¹ The Department of Labor's interim regulations, effective May 28, 2003, found at 29 CFR Part 1980 (2004), were replaced by final regulations effective on August 24, 2004. 69 Fed. Reg. 52104 et seq. (2004).

accounting improprieties to management. The Respondent has filed a motion for summary decision on the grounds that it is not subject to the Act because it has no class of stock publicly traded in the United States, no class of securities registered under Section 12 of the Securities Exchange Act of 1934, and is not required to file reports under Section 15(d) of the Securities Exchange Act of 1934. The motion was served on the Complainant by mail on May 3, 2005, and the accompanying notice advised the Complainant of his rights and obligations in responding to the motion. Pursuant to my Order on Telephone Conference issued April 8, 2005, the Complainant's response to the motion was due on June 8, 2005. The Complainant has not responded to the motion.

By its terms, Sarbanes-Oxley applies only to a "company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company." 18 U.S.C. § 1514A(a). In support of its motion for summary decision, the Respondent has filed the Declaration of Richard Rossitch, Assistant General Counsel and Assistant Secretary for Compass Group USA, Inc., a wholly-owned indirect subsidiary of Compass Group PLC, declaring under penalty of perjury that

... No class of Compass stock is, or ever has been, publicly traded in the United States. Compass has no class of securities registered under Section 12 of the Securities Exchange Act ... nor is Compass required to file reports under Section 15(d) of the Securities Exchanges Act ... Compass' ultimate parent corporation, Compass Group PLC, is chartered in the United Kingdom and ... does not have any class of securities registered in the United States [and] is not required to file reports under Section 15(d) ...

Declaration at pp. 1-2, ¶¶ 3, 4. The Complainant has not filed any materials contravening these facts evidenced by Mr. Rossitch's Declaration. Pursuant to 29 CFR § 18.40, I find that there is no genuine issue of material fact, and the Respondent is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED that the complaint in this matter shall be, and hereby is, DISMISSED, because the Respondent is not subject to the requirements of Sarbanes-Oxley.

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ALICE M. CRAFT
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal you must file a petition for review (Petition) within ten business days of the date of the administrative law judge's decision with the Administrative Review Board ("Board"), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. Your Petition must

specifically identify the findings, conclusions or orders you object to. You waive any objections you do not raise specifically.

At the time you file the Petition with the Board you must serve it on all parties, and the Chief Administrative Law Judge; the Assistant Secretary, Occupational Safety and Health Administration; and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If you do not file a timely Petition, this decision of the administrative law judge becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110. Even if you do file a Petition, this decision of the administrative law judge becomes the final order of the Secretary of Labor unless the Board issues an order within 30 days after you file your Petition notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).