



Issue Date: 26 May 2005

CASE NO.: 2005-SOX-00053

In the Matter of:

**YOLANDA C. GIBSON-MICHAELS,
Complainant,**

v.

**FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent.**

FINAL ORDER OF DISMISSAL

The instant case has been brought by Complainant Yolanda C. Gibson-Michaels (“Complainant”) under the employee protection (whistleblower) provisions of the Sarbanes-Oxley Act of 2002 (the “Act”), 18 U.S.C. §1514A, with implementing regulations appearing at 29 C.F.R Part 1980. The matter now before me is Complainant’s May 9, 2005 motion for withdrawal of her whistleblower retaliation case against the Respondent Federal Deposit Insurance Corporation (FDIC).

By way of background, the March 17, 2005 letter complaint by the pro se Complainant and the essentially identical April 22, 2005 hearing request indicate that the complaint is being filed against the Respondent FDIC (Federal Deposit Insurance Corporation) under “the Whistleblower (Sarbanes-Oxley) Act of 2002.”¹ The complaint is based upon retaliatory actions allegedly taken by the FDIC against Complainant, a former FDIC employee, leading to her execution of a settlement agreement accepting a “buyout” on or about January 11, 2005. A chronology of events dating from 2002 reflects Complainant’s disagreement with her supervisors and managers over a variety of matters, most of which have nothing to do with securities fraud or fraud against shareholders.²

¹ In addition to the Sarbanes-Oxley Act, Complainant asserts violation of her rights under the “EEO Age Discrimination law” and the Older Workers Benefit Protection Act of 1990; the complaint also references other statutes, including “FIRREA” and the Whistleblower Protection Act relating to federal employees appearing at 5 U.S.C. §1221(e). In the chronology, however, Complainant asserts that she has filed complaints in other forums.

² However, Complainant asserts that on November 16, 2004, she reported to the Securities and Exchange Commission the FDIC’s “RICO violations, receivership fraud, quit deed, tax fraud, securities fraud, money laundering, fraudulent financial statements, Bank, Receivership, Contract, Legal Services Agreements, Inside Trading, Unfair Disadvantage of contract (legal Services Agreement) administration, and cancellation of the corporate-wide minority and ownership program approve[d] by Congress.” She alleges that she subsequently raised similar concerns to FDIC officials and other entities.

The complaint was dismissed by OSHA because the FDIC is not an employer covered by the Act as it is not a publicly traded company. In this regard, Complainant's complaint does not appear to be cognizable under the whistleblower provision of the Sarbanes-Oxley Act, set forth at 18 U.S.C. §1514A, which provides, in pertinent part:

No company with a class of securities registered under section 12 of Securities Exchange Act of 1934 (15 U.S.C. 781), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee --

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [fraud and swindles], 1342 [fraud by wire, radio or television], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by- . . .

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. [Emphasis added].

18 U.S.C. §1514A.³ See also 20 C.F.R. §§ 1980.100, 1980.111.

In the Motion now before me (entitled "Request to Withdraw Case Filed with the Department of Labor on April 22, 2005 under Sarbanes-Oxley Whistleblower Retaliation Provisions"), the Complainant sought to withdraw her April 22, 2005 objections to the Findings dated March 24, 2004 of the Occupational Safety and Health Administration (OSHA) dismissing her complaint against Respondent FDIC.⁴ Her request for withdrawal is premised upon 29 C.F.R. §1980.111(c).

³ The Sarbanes Oxley Act incorporates procedural provisions of the "AIR21" Act. .

⁴ Although Complainant indicates in her motion that she wishes to withdraw "the whistleblower retaliation case dated April 22, 2005," it is clear that she is referencing the hearing request/objections dated April 22, 2005.

Under section 1980.111(c) of title 29, C.F.R.:

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the [Administrative Review] Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

Inasmuch as the FDIC is not an employer covered by the Act, Complainant has established good cause for withdrawal of her objections to OSHA's findings. Complainant's request for withdrawal of her hearing request will therefore be granted and this case will be dismissed with prejudice. The findings of OSHA on March 24, 2005 that the Respondent is not a company covered by 18 U.S.C. §1514A will therefore become final.

ORDER

IT IS HEREBY ORDERED, that Complainant's motion to withdraw her hearing request relating to her whistleblower retaliation case against Respondent FDIC be, and hereby is, **GRANTED**, and this case be, and hereby is, **DISMISSED WITH PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

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).