



Issue Date: 12 December 2005

Case No.: 2006-SOX-7

In the Matter of:

Cornelio A. Paz,
Complainant

v.

Mary's Center for Maternal & Child Care,
Respondent

**RECOMMENDED DECISION AND
ORDER OF DISMISSAL**

This case arises under the whistleblower protection provision of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. § 1514A (West Supp. 2003)(herein "the Act"). The Act and its implementing regulations at 29 C.F.R. Part 1980 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 alleges that he resigned from his employment with his employer, Mary's Center, on June 14, 2005, after he was suspended and placed on probation in retaliation for whistleblowing regarding alleged improprieties covered by the Sarbanes-Oxley Act and the False Claims Act. By letter dated September 22, 2005, the Regional Administrator, OSHA, dismissed the Complainant's complaint on the grounds that the Respondent, a non-profit entity, is not subject to the Sarbanes-Oxley Act. The Complainant appealed the findings by letter dated October 14, 2005.

On November 14, 2005, I issued an Order to Show Cause, directing the Complainant to show cause as to why his complaint should not be dismissed on the grounds that the Court does not have jurisdiction under the Sarbanes-Oxley Act. I noted that the Regional Administrator for the Occupational Safety and Health Administration dismissed the Complainant's complaint, on the grounds that the Respondent is not a company within the meaning of Title 18, U.S.C. § 1514A, because it is not a company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or that is required to file reports under Section 15(d) of the Securities Exchange Act of 1934. The Regional Administrator also concluded that the Complainant, who was employed by the Respondent as a Staff Accountant, is not an employee who is covered under Title 18 U.S.C. § 1514A.

The Complainant submitted a response, dated November 21, 2005. The Complainant did

not address the question of whether this Court had jurisdiction of his complaint, but argued, *inter alia*, that OSHA took the “easy way out” by handling his complaint under the Sarbanes-Oxley Act, which was “a clear misconduct of a labor officer with their intent to unlawfully mislead, to commit a federal offense of deception leading to obstruction of justice and tip the scale in favor of Mary’s Center.” The Complainant argued that he was pursuing a complaint under the False Claim Act, as well as unspecified labor violations; he did not dispute that the Respondent was not a public traded company.

In its response, the Respondent stated that it is a non-profit health organization, and thus, is not a “company,” within the meaning of 18 U.S.C. 1514A, because it neither has a class of securities registered under Section 12 of the Securities and Exchange Act of 1934, nor is it required to file reports under Section 15(d) of that Act. Thus, the Complainant, as a former employee of a non-profit entity, was never an “employee” or other individual covered by the whistleblower protections of the Act.

By its terms, the Act 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. 781), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78(d)), or any officer, employee, contractor, subcontractor, or agent of such company.” 18 U.S.C. § 1514A(a). The primary purpose of the Act is “to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. PL 107-204 (HR 3763). Thus, if a company is not publicly traded, the Act does not apply.

Accordingly, with respect to the question of whether this Court has jurisdiction over the Complainant’s claim under the Sarbanes-Oxley Act, I find that there is no genuine issue of material fact. The Complainant’s complaint does not fall within the Act, as the Respondent is not a publicly traded company, and the Complainant is not an employee covered by the whistleblower protections of the Act. Thus, this Court does not have jurisdiction over the Complainant’s complaint, and pursuant to 29 C.F.R. § 18.41, the Respondent is entitled to judgment as a matter of law.¹

Accordingly, IT IS HEREBY ORDERED that the Complainant’s complaint under the Sarbanes-Oxley Act is dismissed.

SO ORDERED.

A

LINDA S. CHAPMAN
Administrative Law Judge

¹ This Court does not have jurisdiction to hear claims under the False Claims Act. Nor are any “labor violations” before this Court for determination.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of the administrative law judge’s decision. *See* 29 C.F.R. § 1980.110(a). The Board’s address is: Administrative Review 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. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed 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).