



Issue Date: 25 June 2010

Case No.: 2010-SOX-19

In the Matter of:

Peter J. Vroom,
Complainant

v.

General Electric Co.,
Brian Hard,
Respondents

**ORDER GRANTING REQUESTS FOR
RECONSIDERATION, AND FOR SUMMARY JUDGMENT**

On April 22, 2010, I issued my Order denying the Respondents' request for summary judgment. On May 10, 2010, Respondent General Electric Co. submitted a Motion for Reconsideration and Memorandum of Law in Support.¹ On May 6, 2010, Respondent Brian Hard submitted his Motion for Reconsideration & Dismissal Pursuant to the Federal Arbitration Act. On May 25, 2010, the Complainant filed his Opposition to Motions for Reconsideration and Dismissal by General Electric Corporation and Brian Hard. I have considered all of these pleadings in making my determination in this matter.

The Parties

Mr. Vroom was hired by the Truck Renting and Leasing Association (TRALA) in 1991, as Vice President of Government Relations. He was promoted to President on January 1, 2000, and to President and Chief Executive Officer on November 12, 2001. Mr. Vroom's employment was terminated on July 8, 2009.

TRALA is a voluntary, non-profit national trade association which serves as a voice for more than 400 member companies in the truck renting and leasing industry. TRALA does not issue 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 Act.

Mr. Brian Hard was hired by Penske Corporation as a sales representative in 1973; after several promotions, he is now the President and Chief Executive Officer of PTL. Mr. Hard is the

¹ On May 17, 2010, Respondent General Electric Co. submitted a letter adopting and joining in the arguments made by Mr. Hard.

Treasurer of TRALA and a member of its Executive Committee.

Penske Truck Leasing (PTL) is a private limited partnership that does not issue securities registered under Section 12 of the Securities Exchange Act, nor is it required to file reports under Section 15(d) of the Act.

General Electric Company (GE) and its wholly owned subsidiary, General Electric Capital Corporation (GECC) are publicly traded entities required to file reports under the Securities Exchange Act, and thus are entities covered under the Act.² Mr. Vroom was not employed by GE or any of its subsidiaries.

According to the Respondents, Penske Truck Leasing (PTL) is a joint venture between Penske Corporation and a subsidiary of GECC, its Gelco Truck Leasing division. Under the parties' joint venture agreement, GECC is a limited partner, and has no right to participate in the operations of PTL, or to manage the terms and conditions of employment at PTL. GECC's primary role is to share in the profits and losses of PTL in proportion to its ownership interest.

Mr. Vroom alleges that PTL is jointly owned by GE and Penske Corporation, with GE being the majority stake holder, and providing billions of dollars of financing. Mr. Vroom states that Mr. Hard serves as PTL's CEO at the will and pleasure of GE. In turn, PTL is the largest member and financial benefactor of TRALA, as well as the largest member of the truck leasing industry. Through its financial relationships and dealings with virtually all of TRALA's board members, PTL and Mr. Hard, have the power to control TRALA, as well as Mr. Vroom's employment.

Mr. Vroom's Allegations

According to Mr. Vroom, Mr. Hard, as an officer/board member and Executive Committee member of TRALA, was in a position to directly affect Mr. Vroom's employment, and he "personally led the charge" to terminate Mr. Vroom's employment at TRALA. Mr. Vroom alleges that Mr. Hard is a company representative of GE, and that he retaliated against Mr. Vroom because he reported unlawful conduct at TRALA that benefitted PTL and GE.

Mr. Vroom alleges that GE, through Mr. Hard and PTL, caused TRALA to terminate his employment, in relation for his protected activity under the Act. In my April 22, 2010 Order denying the Respondents' motions for summary judgment, I found that Mr. Vroom had alleged facts that establish a commonality of business, financial, and management interests between GE and PTL, and in turn, TRALA, that if proven, would be sufficient to establish that his employment with TRALA could be, and was affected by GE and Mr. Hard.³ Because there were clearly issues of fact with respect to the relationships between TRALA, Mr. Vroom's former employer, Mr. Hard, PTL, and GE, and whether TRALA's termination of Mr. Vroom can be traced to GE, I found that summary judgment on this issue was not appropriate.

² Mr. Vroom has named GE, but not GECC, as a Respondent.

³ Again, although Mr. Vroom has not named TRALA, I found that these interrelationships could be sufficient to impute TRALA's termination of Mr. Vroom to Mr. Hard and GE, and to bring GE and Mr. Hard within the reach of the Act.

However, I found that Mr. Vroom's claim that he engaged in protected activity under the Act when he reported sexual harassment of a female employee of TRALA by Mr. Jim Rosen, the Vice President of Government Relations at PTL, was not protected activity under the Act, which protects employees from retaliation for reporting violations of federal law directly related to fraud or securities violations. *See, Levi v. Anheuser Bush Companies, Inc.*, ARB No. 06-102, 07-020, 08-006 (April 30, 2008); *Harvey v. Home Depot*, ARB No. 04-114, 115 (June 2, 2006).

I also found that Mr. Vroom did not engage in protected activity when he opposed PTL's and Mr. Hard's attempt to use TRALA to lobby for what he characterized as an anticompetitive agenda. Again, even accepting Mr. Vroom's factual allegations as true, this is not protected activity under the Act, as it does not involve violations of law directly related to fraud or securities violations.

Finally, I found that Mr. Vroom's allegations, that he engaged in protected activity when he reported and attempted to investigate "conflicts of interest and illegalities, including potential tax fraud," involving NTLS, a trade association and member of TRALA, and several individual members, had the potential to constitute protected activity under the Act, which requires that a complainant establish that he provided information that he reasonably believed constituted a violation of the laws and regulations enumerated in the Act, or provisions of federal law related to fraud against shareholders. Mr. Vroom alleges that Mr. Hard signed and submitted an IRS Form 990 to the IRS, in which he knowingly and intentionally made false statements regarding conflicts of interest at TRALA, which is a crime under Title 18 U.S. Code Section 1001, and a fraud on shareholders.

On May 6, 2010, Respondent Brian Hard filed his Motion for Reconsideration & Dismissal Pursuant to the Federal Arbitration Act.⁴ Mr. Hard argues that Mr. Vroom is precluded from bringing this claim because, as part of his employment agreement, he agreed to arbitrate all claims relating to that employment agreement. In addition, Mr. Hard seeks reconsideration of my determination that Mr. Vroom's allegations, that he engaged in protected activity when he reported and attempted to investigate "conflicts of interest and illegalities, including potential tax fraud," involving NTLS, a trade association and member of TRALA, and several individual members, had the potential to constitute protected activity under the Act. Mr. Hard argues that, even if Mr. Vroom complained to TRALA about Mr. Hard's alleged role in an alleged fraudulent tax filing on behalf of TRALA, Mr. Hard could not possibly have perpetrated a fraud on any stockholders of any publicly traded company.

In addition, Mr. Hard argued that it was an undisputable fact that he never prepared, signed, or submitted TRALA's tax return. Finally, Mr. Hard argued that TRALA's tax return, including the allegedly fraudulent Form 990, was filed on September 21, 2009, more than two and a half months after Mr. Vroom was discharged on July 8, 2009. Mr. Vroom could not have reported Mr. Hard or anyone else for filing a fraudulent tax return, nor could TRALA have discharged Mr. Vroom for reporting that Mr. Hard prepared, signed, and filed a fraudulent tax return.

⁴ Mr. Hard also incorporated by reference his arguments in his Motion for Summary Decision and attached exhibits.

On May 10, 2010, Respondent GE filed its Motion for Reconsideration and Memorandum of law in Support. Respondent GE argues that Mr. Vroom's complaint is entirely devoid of allegations that rise to fraud against shareholders, and that there is no connection between the interests of a GE shareholder and the conflict of interest filings of TRALA. In addition, GE argues that the relevant documents establish beyond doubt that Mr. Vroom lacked a "reasonable belief" that there was any fraud, as he himself signed, and thus attested to the accuracy of the documents at issue. Finally, GE argues that because the Form 990 was not filed until well after Mr. Vroom's termination, at most, he had a reasonable belief that a violation of law might occur, but not a reasonable belief that a violation of law had occurred.

Mr. Vroom submitted his Opposition to Motions for Reconsideration and Dismissal by General Electric and Brian Hard on May 25, 2010.⁵ Mr. Vroom argues that the Respondents are merely rehashing issues that I have already decided, and that there is no legal basis to support the petitions for reconsideration.⁶ Mr. Vroom argues that his complaint is not subject to arbitration; and that he participated in the audit by TRALA that was the "principal basis" for its filing of the Form 990, whose submission to the IRS was authorized and overseen by Mr. Hard. He also argues that despite the fact that his employer, TRALA, is not a public corporation, his complaint is covered under the Act, and finally, he discusses at length the alleged financial ties between GE, Penske, and Mr. Hard.

DISCUSSION

Mr. Vroom's agreement to arbitrate claims arising out of his employment contract

Mr. Vroom's employment agreement, which he signed in November 2001 when he became the President and CEO of TRALA, provides as follows:

Arbitration. Any controversy or claim arising out of, or relating to this Agreement, shall be settled by arbitration in accordance with the rules then applicable of the American Arbitration Association, and judgment upon the award may be rendered in any court having jurisdiction thereof. The parties agree that all such arbitration shall take place exclusively in Alexandria, Virginia.

On November 24, 2009, Mr. Vroom filed a complaint with the American Arbitration Association seeking arbitration, alleging, *inter alia*, that TRALA breached his employment agreement, and wrongfully ended his employment.

In arguing that the arbitration provisions in his employment agreement do not preclude his claim in this matter, Mr. Vroom states that "a private arbitration agreement cannot be applied to preclude the Department of Labor or the ALJ, from complying with their statutory obligations

⁵ Mr. Vroom also submitted supplemental information on that date.

⁶ The Administrative Review Board (ARB) has held that the ALJ has the authority to reconsider a decision under Section 806 of the Act. I find that it is appropriate in this case to grant the Respondents' requests for reconsideration to correct a misapprehension of the relevant facts and applicable law. *Henrich v. Ecolab, Inc.*, ALJ No. 2004-SOX-51 (ARB May 30, 2007).

under SOX,” citing to and quoting from the decision in *Sullivan v. Science Applications International Corp.*, 2007-SOX-60 (Sep. 21, 2007). Mr. Vroom has quoted this decision completely out of context, and misrepresented the findings by the Administrative Law Judge, which directly contradict his claim.

Thus, as Administrative Law Judge William Dorsey found in *Sullivan, supra*,

Article III courts and administrative law judges have found claims under § 806 of the Sarbanes-Oxley Act are subject to arbitration. *Alliance Bernstein Investment Research and Management, Inc. v. Schaffran*, 445 F.3d 121, 127 (2d Cir. 2006) (committing to an arbitrator the question whether a whistleblower claim under § 806 of the Sarbanes-Oxley Act was “[a] claim alleging employment discrimination . . . in violation of a statute” under the mandatory arbitration clause form U-4 of National Association of Securities Dealers); *Guyden v. Aetna Inc.*, 2006 WL 2772695 (D. Conn. 2006) (requiring a former employee to arbitrate a claim brought under § 806 of the Sarbanes-Oxley Act); *Boss v. Salomon Smith Barney Inc.*, 263 F.Supp. 2d 684 (S.D.N.Y. 2003) (similar); *Ulibarri v. Affiliated Computer Services*, 2005-SOX-46 and 47 slip op. at 17-22 (ALJ Jan. 13, 2006).

Id. at 2-3. As Judge Dorsey noted, agreements to arbitrate employment claims are enforceable, *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001) (holding that arbitration agreements can be enforced under the Federal Arbitration Act without contravening Congressional policies that provide employees specific federal protections against discrimination), and a person who agrees to arbitrate a statutory claim “does not forgo the substantive rights afforded by the statute,” he “only submits to their resolution in an arbitral, rather than a judicial, forum.” *Gilmer*, 500 U.S. at 26. *See also, EEOC v. Luce, Forward, Hamilton & Scripps*, 345 F.3d 742, 750 (9th Cir. 2003) (en banc) (“arbitration affects only the choice of forum, not substantive rights”); *Booker v. Robert Half Int’l, Inc.*, 413 F.3d 77 (D.C. Cir. 2005) (Roberts, J.) (compelling arbitration of a plaintiff’s employment claim under the D.C. Human Rights Act after severing a clause that improperly forbade punitive damage awards).

The full context of the quotation by Mr. Vroom is as follows:

By participating in discovery at OSHA, before the matter came to the Office of Administrative Law Judges for trial, the former Employer did not waive its arbitration rights. That discovery was part of the Secretary’s investigation of the complaint, not litigation. An arbitration clause cannot limit or interfere with the Secretary of Labor’s statutory obligation to investigate Sarbanes-Oxley complaints, or bind the Secretary, who is not a party to the arbitration agreement.

Id. at 19-20.

Mr. Vroom agreed to arbitrate “any controversy or claim arising out of, or relating to” his employment agreement with TRALA. He argues that his claim in this case implicates Mr. Hard’s conduct in his “representative” capacity on behalf of Penske and GE, not his conduct on behalf of TRALA, and neither Mr. Hard nor GE are parties to his employment agreement.

Mr. Vroom also argues that GE and Mr. Hard have “waived” any right they may have had to demand arbitration by participating in this proceeding. Neither GE (which is certainly not a party to Mr. Vroom’s employment agreement) nor Mr. Hard (who is a party to the employment agreement only in the sense that he is an officer of TRALA) is “demanding” arbitration. Rather, they argue that Mr. Vroom’s claims that arise out of or relate to his employment agreement must be resolved exclusively in arbitration, as provided by the employment agreement. Nor have GE or Mr. Hard, by their “participation” in these proceedings (i.e., responding to the complaint Mr. Vroom filed with OSHA, and filing pleadings before the Office of Administrative Law Judges) induced Mr. Vroom, who was the one who initiated these proceedings, to waive any substantive rights.

Nor does Mr. Vroom’s claim that Mr. Hard, in engineering his termination from TRALA, acted as an agent for GE, remove his claims from the scope of his arbitration agreement. Regardless of whether Mr. Hard was also acting on behalf of GE, as Mr. Vroom alleges, Mr. Vroom’s claim clearly arises out of or relates to his employment agreement, and he is bound by its terms.⁷

Were this the only issue for consideration, I would adopt the approach taken by Judge Dorsey in the case relied on by Mr. Vroom, and find that the Federal Arbitration Act requires that this claim be stayed. However, for the reasons discussed further below, I find that, viewing the undisputed facts in the light most favorable to Mr. Vroom, he has not established that he engaged in protected activity, and thus the Respondents are entitled to summary judgment.

Whether Mr. Vroom engaged in protected activity under the Act

Mr. Vroom’s claim that he engaged in protected activity under the Act is based on his allegation that, in February 2009, he brought “strong evidence” of conflicts of interest and illegalities, including potential tax fraud by NTLs and individual members of TRALA, to the attention of TRALA governance. In addition, Mr. Vroom alleges that, after his employment was terminated, Mr. Thayer, as TRALA’s Chairman, and Mr. Hard, as TRALA’s Treasurer, filed false IRS returns for 2008, declaring that no business or family relationships or conflicts of interest existed on the part of any of the members of TRALA’s governance.⁸

Mr. Vroom’s activity will be protected under the Act if he reported information which he “reasonably believe[d] constitute[d] a violation of . . . any rule or regulation of the Securities and Exchange Commission.” 18 U.S.C. Section 1514A(a)(1). The “reasonable belief” for which the

⁷ Of course, GE is not a party to Mr. Vroom’s employment agreement, but Mr. Vroom has not alleged that any officer, director, or employee of GE was involved in the decision to terminate his employment; the only connection to that determination is through Mr. Hard, who Mr. Vroom claims was acting on GE’s behalf, and in his capacity as an officer or director of TRALA, is a party to the employment agreement.

⁸ Respondent GE argues that despite Mr. Vroom’s allegation that Mr. Hard falsely stated to the IRS that there were no conflicts of interest at TRALA, for the purpose of facilitating Penske’s acquisition of TRALA member companies, Mr. Hard did not sign the Form 990, and it unclear what role he had in the filing of the document. However, Mr. Vroom alleges that as TRALA’s Chief Financial Officer, Mr. Hard approved the submission of the Form 990 “after he acted to unlawfully affect Mr. Vroom’s employment,” and knowingly allowed the communication of false Form 990s to the IRS. Complainant’s Brief at 17.

statute calls is scrutinized under both a subjective and objective standard. The objective reasonableness is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the employee. *See, Allen v. Administrative Review Board*, 514 F.3d 468 (5th Cir. 2008).

The Fourth Circuit has held that complaints of violations that “have happened or are in progress constitute a reasonable belief under the Act.” *Id.* But the Court rejected the claim that a reasonable belief that a violation has occurred or is in progress can include a belief that a violation is about to happen upon some future contingency. *Livingston v. Wyeth, supra*, 520 F.3d at 352 (citing *Jordan v. Alternative Resources Corp.*, 458 F.3d 332, 340-341 (4th Cir. 2006)). In other words, an allegation that a violation “may” occur does not constitute “conduct which the employee reasonably believes constitutes a violation of . . . any rule or regulation of the Securities and Exchange Commission.” 18 U.S.C. Section 1514A(a)(1); *Livingston, supra*, 520 F.3d at 352; *see also, Harvey v. Home Depot U.S.A., Inc.*, ARB No. 04-114-15 (ARB June 2, 2006) (“A mere possibility that a challenged practice could adversely affect the financial condition of a corporation, and that the effect on the financial condition could in turn be intentionally withheld from investors, is not enough.”)

Here, Mr. Vroom has acknowledged that TRALA’s Form 990, which he alleges falsely reported that there were no conflicts of interest at TRALA, was not filed with the IRS until after his employment was terminated.⁹ Mr. Vroom argues the filing of this form was a “ministerial act,” and the fraud that preceded it, that is, Mr. Vroom’s reporting of the conflicts of interest, and the potential for the filing of a false statement with the IRS, constitutes his protected activity.

However, this ignores the fact that, regardless of whether there were conflicts of interest, or whether Mr. Vroom reported them to TRALA management, or whether there was a subsequent internal audit by TRALA, there was no violation of any law, or any fraud, until the alleged false statements were actually made to the IRS. The filing of a tax return is not a mere “ministerial” act; it is the action that, if fraudulent, constitutes the actual violation of the law.

Moreover, even assuming that Mr. Vroom’s reports of conflicts of interest and the “potential” for tax fraud were to constitute a belief that a violation of law was in progress, he has not articulated how the filing of a false Form 990 by TRALA could adversely affect the financial condition of GE, which is not a member of TRALA, and is the only named Respondent with shareholders. These alleged conflicts of interest do not relate either to GE, PTL, or Penske, but relate to member companies of TRALA.

Mr. Vroom argues that the submission of the allegedly false Form 990 by TRALA is not the extent of his allegations, and that “GE is certainly less than forthcoming as it relates to its disclosure of the true extent of its financial dealings with Penske.” Complainant’s Brief at 19. Indeed, Mr. Vroom has devoted much of his brief to his allegations that GE and Penske maintain substantial ties, and that GE has not disclosed the full extent of their financial dealings. He states that

However, this does not change the fact of the links that exist between the financial

⁹ Mr. Vroom was fired in July 2009; the Form 990 was filed in September 2009.

disclosures and false statements related to Penske and GE that occur at the TRALA level, and their ultimate impact on GE's asserted right to have de-consolidated its reporting of Penske's operations, which permit it to remove billions of dollars of debt from its financial books of account.

Complainant's Brief at 20.

Mr. Vroom's perception of problems in GE's financial disclosures of its relationship with Penske is completely irrelevant to his claim under the Act, in which he alleges that he reported conflicts of interest at TRALA, and the potential for the filing of a false Form 990 with the IRS by TRALA. The extent of any financial interrelationships between GE, Penske, PTL, and TRALA may be germane to the issue of whether Mr. Vroom has alleged facts that, if proven, could support his allegation that Mr. Hard acted on behalf of GE in making the decision to terminate his employment at TRALA. But it has nothing to do with the issue of whether, in reporting conflicts of interest to TRALA, which did not involve GE, which is not a member of TRALA, and the possibility that a false Form 990 might be filed by TRALA, Mr. Vroom had a reasonable belief that the potential for filing of such a Form 990 would adversely affect the financial interests of GE, or provide misleading information on its financial condition to its shareholders.¹⁰

As the Respondent GE has argued, protected activity under the Act must involve an alleged violation of a federal law directly related to fraud against *shareholders*. *Harvey v. Home Depot, Inc.*, 2004-XOS-20, 12 (ALJ May 28, 2004). In this case, the violation of federal law alleged by Mr. Vroom is TRALA's failure to disclose alleged conflicts of interest on its 2008 Form 990 filed with the IRS. But Mr. Vroom has alleged no facts that, if proven, would establish any nexus between this alleged conflict of interest form filed on behalf of TRALA, and the interests of the shareholders of GE, which is not a member of TRALA. Mr. Vroom relies on the alleged financial interconnections between GE and Penske, arguing that "Obviously, a false statement intentionally made to the IRS to conceal the illegalities ongoing within TRALA establishes a fraud against GE's shareholders who invested in the consolidated company . . ." Complainant's Opposition to Motions for Summary Decision at 14. The connection is not obvious, nor has Mr. Vroom articulated how any misleading information on TRALA's Form 990 constituted any significant, material, or other information about GE's finances, or had the potential to have an impact on any GE investor.¹¹ See, *Frederickson v. Home Depot, USA*, 2007-SOX-13 (July 10, 2007) (allegations of fraud on a third party must be "of sufficient import to constitute information upon which a reasonable investor would rely.").

Nor is Mr. Vroom's claim that, "Just as GE appears motivated to protect its financial privacy, Mr. Hard too, has a history of being less than candid, and of abusing the positions of

¹⁰ Mr. Vroom has not addressed Respondent GE's argument that he could not have a reasonable belief that the Form 990 was false, when for at least two previous years, he signed and submitted Form 990s to the IRS that failed to disclose the same relationships he claims formed the basis of his termination.

¹¹ As Respondent GE argues, the fraud alleged by Mr. Vroom, the failure to disclose alleged conflicts of interest on the Form 990, did not have anything to do with any misreporting of TRALA's finances, and none of the alleged conflicts that TRALA failed to disclose related directly to GE or Penske; rather, the majority of the alleged conflicts related to Navistar or other TRALA member companies.

trust that he holds on behalf of other companies” at all relevant to the issues raised in this claim under the Act. Complainant’s Brief at 20. GE’s alleged motivation to protect its financial privacy, or Mr. Hard’s alleged history, have absolutely nothing to do with the question of whether Mr. Vroom, in reporting the potential for non-disclosure of alleged conflicts of interest at TRALA, engaged in protected activity that involved an alleged violation of a federal law directly related to fraud against the GE shareholders. *See, e.g., Harvey v. Home Depot, supra*, at 12.

As Respondent GE points out, the central purpose of the whistleblower provisions of the Act is to protect shareholders from fraud. Even assuming that the 2008 Form 990 filed by TRALA fraudulently failed to disclose the existence of conflicts of interest among its member companies, and setting aside the undisputed fact that this Form was not filed until after Mr. Vroom’s employment was terminated, Mr. Vroom has not articulated any connection between the interests of GE shareholders and such filings. Not only do Mr. Vroom’s allegations regarding conflicts of interest at TRALA fail to involve a violation of federal law directly related to fraud against shareholders, he has alleged no facts that, if proven, would establish that such a violation related to fraud against **GE’s shareholders**. *See, Harvey v. Home Depot, Inc., supra*, at 12. Mr. Vroom’s wholly conclusory claim, that a false statement intentionally made to the IRS to conceal illegalities within TRALA establishes a fraud against GE’s shareholders notwithstanding, Mr. Vroom has not articulated, much less presented any evidence, as to how this alleged fraudulent filing by TRALA had any relationship to fraud against investors or shareholders of GE, which was not a member of TRALA. *See Townsend v. Big Dog Holdings, Inc.*, 2006-SOX-28 (Feb. 14, 2006).

In order to defeat the Respondents’ motions for summary judgment, Mr. Vroom may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine issue of material fact for hearing. 29 C.F.R. Section 18.40(c). I have viewed the pleadings, affidavits, and exhibits submitted by the parties, in the light most favorable to Mr. Vroom, and I find that his claim that he reported conflicts of interest at TRALA, and the potential for tax fraud (i.e., failure to disclose those conflicts on the Form 990) does not constitute protected activity under the Act. There is no genuine issue as to any material fact, and thus the Respondents are entitled to judgment as a matter of law. 29 C.F.R. § 18.40(d).

CONCLUSION

Based on the foregoing, I find that, as a matter of law, Mr. Vroom’s allegations do not constitute protected activity under the Act. Accordingly, the Respondents’ motions for reconsideration, and for summary judgment are GRANTED, and this claim is hereby dismissed.

SO ORDERED.

A

LINDA S. CHAPMAN
Administrative Law Judge

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).