



Issue Date: 19 April 2011

CASE NO.: 2011-SOX-00028

IN THE MATTER OF

**JOHN CRAIG WASCOM,
Complainant**

v.

**CORNERSTONE CHRISTIAN SCHOOL,
Respondent**

**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 supplementing 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 was disparately treated and unjustly terminated from his employment after he reported illegal activity by the School Board.

By letter dated January 31, 2011, the Regional Administrator, OSHA, dismissed the complaint on the grounds that the Respondent, a non-profit entity, is not subject to the Act as 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 Complainant appealed the findings by letter dated March 1, 2011.

On March 10, 2011, 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 Act as Respondent is not a company within the meaning of 18 U.S.C. § 1514A. I noted that in his request for hearing Complainant refers to Respondent as a non-profit.

The Complainant submitted a response, dated April 8, 2011. The Complainant did not address the questions of whether this Court had jurisdiction of his complaint and whether Respondent has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934. Complainant merely asserts that “whistleblower protections also applies to private organizations per section 1107 which amends U.S.C. Section 1513, Chapter 73, Title 18.”

Although 29 C.F.R. Part 18, Rules for Practice and Procedure for Administrative Hearings, does not address a motion to dismiss, 29 C.F.R. §18.1(a) provides that in situations not addressed in Part 18, the Federal Rules of Civil Procedure are applicable. Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may move for dismissal on the grounds that a complaint does not state a claim upon which relief may be granted. Courts have the inherent power to take such action, or to find that a complaint is frivolous on its face. *See, Koch v. Mizra*, 869 F. Supp. 1031 (W.D.N.Y. 1994); *Johnson v. Baskerville*, 568 F.Supp. 853 (E.D.Va. 1983). Such a conclusion is not a decision on the merits, but involves an inquiry as to whether, even assuming that all of the Complainant’s allegations are true, he has failed to state a cause of action upon which relief can be granted.

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).¹ 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 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 alleged to be a publicly traded company. Thus, this Court does not have jurisdiction over the complaint and pursuant to 29 C.F.R. § 18.41, the Respondent is entitled to judgment as a matter of law.

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

So ORDERED.

A

LARRY W. PRICE
ADMINISTRATIVE LAW JUDGE

¹ Contrary to Complainant’s assertion, there is nothing in Section 1107 that would expand the definition of employer under the Act to include a “private organization.”

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, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

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.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party’s legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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).