

Issue Date: 14 July 2011

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

CASE NO.: 2011-SOX-00038

In the Matter of:

ROGER WILK
Complainant

v.

AMTRUST UNDERWRITERS, INC.
Respondent

ORDER OF DISMISSAL

This proceeding arises from a complaint of discrimination filed 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.A. § 1514A (West 2004) (SOX) and the procedural regulations found at 29 C.F.R. Part 1980 (2004). On April 15, 2011, the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued findings and an order dismissing the complaint. By letter received May 17, 2011, the Complainant objected to the Secretary’s preliminary order dismissing his complaint, and requested a hearing pursuant to 29 C.F.R. § 1980.106. The hearing is currently set for July 26, 2011.

On July 11, 2011, the Complainant, proceeding *pro se*, filed a Request to Withdraw Complaint Without Prejudice.¹ The undersigned held an on-the-record telephone status conference call with the parties on July 12, 2011, at which the Complainant reiterated his intention to seek withdrawal without prejudice of the Sarbanes-Oxley Act claim pending before the undersigned.² Counsel for Respondent stated Respondent did not object to the motion.

¹ The Complainant’s Request to Withdraw contains nine numbered paragraphs outlining a summary of unsuccessful settlement efforts between the parties and states that Complainant “does not intend to imply that all facts, observations and reasons entering into his decision to withdraw the subject complaint without prejudice are provided in ...[the Request to Withdraw].” See, Request ¶ 9.

² The Complainant made vague reference to the possible existence of claims other than the instant SOX claim, and indicated he had consulted with unnamed counsel and wanted to withdraw the SOX claim without prejudice.

The regulations implementing the Sarbanes-Oxley Act, provide:

At any time before the [Secretary's] findings or order becomes final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge... . The judge...will determine whether to approve the withdrawal... .

29 C.F.R. 1980.111(c). The Secretary's findings are not final and Complainant has filed a written request to withdraw the pending SOX claim without prejudice, which is unopposed. Accordingly, **IT IS HEREBY ORDERED**, that Complainant's request to withdraw be, and hereby is, **GRANTED**, and this case be, and hereby is, **DISMISSED WITHOUT PREJUDICE**.

IT IS HEREBY FURTHER ORDERED that the hearing in this matter which was scheduled to be heard on **July 26, 2011**, in Hartford Connecticut, is hereby **CANCELLED**.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

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).