



Issue Date: 26 May 2011 In the Matter of:

RICKY D. WOODLING
Complainant

v.

2011 SOX 00022

MATRIX SERVICE CO.
Respondent

ORDER

GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

This case arises under the whistleblower provisions of Section 806 of the Sarbanes-Oxley Act of 2002 ("the Act" or "SOX"), 18 U.S.C. § 1514A, enacted on July 30, 2002. This law includes an employee protection provision that protects employees who blow the whistle on violations of U.S. Security and Exchange Commission rules and regulations and other laws relating to preventing fraud against shareholders. Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, P.L. No. 107-204. Section 806 is codified as 18 U.S.C. § 1514A.

Respondent alleges that on its face, the complaint filed in this case shows that Complainant did not report any covered violation. I am advised that the only possible remaining protected activity is a violation of federal law relating to fraud against shareholders. "Yet, the Complaint does not allege Matrix committed fraud against its shareholders. Rather, by his own account, Woodling simply didn't like "the terms and conditions" of a contract between Matrix and a vendor. As such, Woodling's complaint is nothing more than a general inquiry regarding a business decision rather than a specific complaint about fraud enumerated" in the statute.

Although I granted Complainant additional time to respond, he has failed to do so.

Respondent also argues that Complainant also failed to allege any violations with specificity.

STANDARDS

A motion for summary disposition may lie when the record (i.e., pleadings, affidavits and declarations offered with the motion and evidence developed in discovery) demonstrate that there are no genuine issues of material fact, and that the moving party is entitled to disposition as a matter of law." 29 C.F.R. § 18.40(d), 18.41(a); Fed. R. Civ. P. 56 (c); see *Townsend v. Big Dog Holdings, Inc.*, 2006-SOX-28 (ALJ Feb. 14, 2006); see also *Richardson v. JP Morgan Chase & Co.*, 2006-SOX-82 (ALJ Jul. 7, 2006). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). However, a court should not make credibility determinations or weigh the evidence. *Reeves v. Sanderson Plumbing Prod., Inc.*,

530 U.S. 133, 150 (2000). The party who brings the motion for summary decision bears the burden of production to prove that the non-moving party cannot make a showing sufficient to establish an essential element of the case. *Rusick v. Merrill Lynch & Co.*, 2006-SOX-45 (ALJ Mar. 22, 2006). Once the moving party shows the absence of a genuine issue of material fact, the non-moving party cannot rest on his pleadings, but must present “specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A genuine issue of material fact exists when, based on the evidence, a reasonable fact-finder could rule for the non-moving party. *Anderson*, 477 U.S. at 242. However, granting a summary decision motion is not appropriate where the information submitted is insufficient to determine if material facts are at issue. *Id.* at 249.

FINDINGS OF FACT

On December 3, 2010, Complainant filed a complaint with the Secretary of Labor, alleging Respondent retaliated against m on or about August 19, 2010 in violation of SOX. In his written complaint, Complainant stated,

Several weeks later I was brought the contract for the flex seal and I did not like the terms and conditions on the contract so I asked the sub contracts manager to try and revise them, I also spent 10 minutes on the Internet and found two more suppliers that we had not even requested a bid on the flex seal The next thing I know I was brought into Kevin Larocks office and was told to stay out of his business, at that point I told him we were in violation of our Sarbanes/Oxley requirements and he need to relook at the \$36,000.00 bid on the flex seal The following day August 19, 2010 I was told by Kevin Larock that Matrix Service Inc no longer needed my services.”

I am required to construe Complainant’s pleadings liberally in deference to his pro se status and lack of training in the law. See, e.g., *Ubinger v. CAE Int’l*, ARB No. 07-083, ALJ No. 2007-SOX-036, slip op. at 6 (ARB Aug. 27, 2008) (quoting *Trachman v. Orkin Exterminating Co. Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-003, slip op. at 6 (ARB Apr. 25, 2003)).

I find that the complaint does not offer any facts that are sufficient to state a claim that he engaged in protected activities under the Act. It is clear that Complainant’s allegations do not relate to any of the listed categories of fraud under Sarbanes-Oxley. None of the factual allegations involves a violation of any of the specified criminal statutes or fraud upon shareholders.

Accordingly, I find that Complainant has failed to state a claim upon which relief can be granted under Sarbanes-Oxley.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that the Sarbanes-Oxley whistleblower complaint of Ricky D. Woodling is **DISMISSED**.

A

DANIEL F. SOLOMON
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, 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).