U.S. Department of Labor

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Issue Date: 04 June 2014

Case No.: 2014-SOX-18

In the Matter of:

Kurt Fuqua,
Complainant

v.

SVOX AG,
Thomas Soseman,
Amanda Inskeep,
Respondents

RECOMMENDED ORDER OF DISMISSAL

The Complainant, Mr. Kurt Fuqua, alleges violations of the employee protection provisions in Section 806 of the Sarbanes-Oxley Act of 2002, codified at 18 U.S.C. § 1514A ("the Act"), and implemented at 29 C.F.R. Part 1980 (2010). Section 806 prohibits covered employers from discriminating against an employee in retaliation for reporting information that he or she reasonably believes violates 18 U.S.C. §§ 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), 1348 (security fraud), any rule or regulation of the Securities and Exchange Commission ("SEC"), or any provision of federal law relating to fraud against shareholders. The Act extends protection to employees of any company "with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d)) . . . ."

Procedural History

On December 22, 2013, Mr. Fuqua filed a formal complaint with the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"), alleging that Respondents falsely denied his claims that they owed him wages and accrued interest, and filed a motion to compel him to participate in arbitration, in retaliation for raising concerns to Respondent's management regarding what he believed to be an unlawful request for employees to turn over rights to intellectual property. After conducting an investigation, OSHA's Regional Administrator issued a letter dated January 27, 2014, dismissing Mr. Fuqua's, on the grounds that the adverse employment actions alleged by Mr. Fuqua were not adverse employment actions under the Act. By letter dated February 28, 2014, Mr. Fuqua sent a letter to the Office of

Administrative Law Judges objecting to the Administrator's findings and requesting a formal hearing on the merits. Mr. Fuqua's case was assigned to me on March 6, 2014.

On April 1, 2014, I issued an Order advising the parties that I would consider the timeliness of Mr. Fuqua's complaint, and whether he had articulated an adverse action that falls under the Act, as preliminary matters. The parties were provided time to submit any dispositive motions, and to respond to any motion filed by another party.[1]

On May 2, 2014, the Respondents SVOX AG and Amanda Inskeep submitted their dispositive motion.[2] On May 6, 2014, Respondent Thomas Soseman submitted his Motion for Summary Decision and Sanctions. On May 27, 2014, the Complainant submitted his Response in Opposition to Thomas Soseman's Motion for Summary Judgement and Sanctions. On June 2, 2014, the Complainant submitted his Response to Respondents Inskeep and SVOX AG's Motion for Summary Judgment and Sanctions.

Standard of Review

Summary decision may be granted for either party if the pleadings, affidavits, and materials obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. 29 C.F.R. §§ 18.40(d), 18.41(a). The purpose of summary judgment is to promptly dispose of actions in which there is no genuine issue as to any material fact. *Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995); *Harris v. Todd Shipyards Corp.*, 28 BRBS 254 (1994). An administrative law judge may grant a summary decision for either party if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. 29 C.F.R. § 18.40(d). The evidence and inferences are viewed in the light most favorable to the non-moving party. *Dunn v. Lockheed Martin Corp.*, 33 BRBS 204, 207 (1999).

Background[3]

SVOX AG is a wholly-owned subsidiary of Nuance Communications, Inc. ("Nuance"), a publicly-traded company subject to the reporting requirements of the Securities and Exchange Act. SVOX AG is a foreign corporation with its headquarters in Zurich, Switzerland. SVOX USA, Inc. is a wholly-owned subsidiary of SVOX AG, and is a Delaware corporation with its headquarters in Chicago, Illinois. (Nuance, SVOX USA, Inc., SVOX AG, and the individual Respondents are collectively referred to herein as "SVOX" or "Respondents").

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[1] My April 1, 2014 Order provided that the parties had 14 days from receipt of the opposing side's motion to submit a response. Despite their untimely submission, I have considered the Complainant's responses.

[2] In his Response to Respondents Inskeep and SVOX AG's Motion for Summary Judgment and Sanctions, Mr. Fuqua claims that the Respondents did not serve him with any of the 11 exhibits referenced in their motion, "precluding review of the unseen contents and opportunity for proper rebuttal." In fact, with the exception of the Declaration of David Greenbaum, Exhibit H, all of the exhibits referred to by the Respondents are orders, complaints, briefs, notices, or decisions in matters in which Mr. Fuqua was a party. He clearly had access to these documents and the opportunity to review them for "proper rebuttal."

[3] Unless otherwise noted, the sequence of events discussed below is not disputed by either party.

Respondent Amanda Inskeep is an attorney with the firm of Littler Mendelson, P.C., which was retained by Nuance in August 2011 to represent Nuance in various legal actions filed by Mr. Fuqua. She has never been employed by Nuance, SVOX USA, or SVOX AG.

Respondent Thomas Soseman is an attorney who was retained by Respondent SVOX to prepare a form employment contract for SVOX's employees, including Mr. Fuqua.

Mr. Fuqua was employed by SVOX AG from February 2009 to January 2010. During this period, SVOX AG was not a publicly traded company required to file reports under Section 15(d) of the Securities Exchange Act of 1934. On June 16, 2011, SVOX AG was purchased by Nuance; Nuance is a publicly traded company. Mr. Fuqua has never been employed by Nuance.

Mr. Fuqua alleges that in 2009, he was asked to sign a revised employment agreement with an invention assignment clause, when he discovered a scheme by the employer, and the employer's officers, employees, and agents to defraud and misappropriate intellectual property of employees, the U.S. government, and several other parties, a scheme that violated state and federal laws. Mr. Fuqua alleges that when he discovered this scheme, he provided information to officers of his employer, and assisted in the investigation of the scheme, and as a result, was sent a notice of termination which he received by email on October 22, 2009, and by mail on October 26, 2009. This notice scheduled his last day for 90 days later, or approximately January 24, 2010.

This is not Mr. Fuqua's first complaint against SVOX AG and Mr. Soseman. Mr. Fuqua first filed a complaint with OSHA on November 16, 2012, against SVOX AG, SVOX USA, and Nuance Communications, Inc., as well as Mr. Soseman and four other individuals. In that complaint, Mr. Fuqua alleged mail fraud, wire fraud, and fraud against shareholders involving a scheme by the Respondents to misappropriate the intellectual property of employees, the U.S. government, and others. Mr. Fuqua charged that SVOX unlawfully terminated his employment, withheld wages and accrued interest, appropriated his intellectual property, and filed motions to compel arbitration and to hold him in contempt of court in civil proceedings.

The Secretary dismissed Mr. Fuqua's complaint on August 15, 2013, finding that Mr. Fuqua did not suffer an adverse employment action within the filing period. Mr. Fuqua appealed that determination to the Office of Administrative Law Judges. On November 27, 2013, Chief Administrative Law Judge Stephen Purcell issued an Order granting summary judgment against Mr. Fuqua, and dismissing his complaint. Mr. Fuqua appealed, and a determination on his appeal is pending before the Administrative Review Board. Mr. Fuqua filed the instant complaint on December 22, 2014.

In connection with his current claim, in his March 22, 2014 response to my Preliminary Order, Mr. Fuqua stated that his complaint in this case is "relatively simple," and involves two "core issues" and the resulting damage:

1. Whether Respondents withheld wages and then falsely denied the valid wage claim (a criminal act in Illinois) in retaliation for my protected activity.

2. Whether Respondents attempted to compel arbitration of wage claims without basis, and in violation of court orders staying arbitration, in retaliation for my protected activity.

Mr. Fuqua claimed that the Respondents' actions were taken after he participated in a filing before the Department of Labor, which was a protected activity, involving "other parties and other actions which are not part of this complaint."[4]

DISCUSSION

Whether Mr. Fuqua's Claims Fall under the Act

Respondents argue that Mr. Fuqua's claims are not covered by SOX, because he was never employed by a publicly traded company, and thus the Department of Labor does not have jurisdiction over his complaint. The Respondents argue that Mr. Fuqua does not allege that he was employed by a publicly traded company, but relies on the acquisition of SVOX AG by Nuance, which is a publicly traded company, a year and a half after he was dismissed by SVOX AG.

There is no liability when an adverse employment action occurs before the employer becomes subject to the Sarbanes Oxley Act. *Roulett v. American Capital Access*, 2004-SOX-78 (ALJ Dec. 22, 2004) (employee could not bring a claim for relief when his employer was not subject to the requirements of sections 12 or 15(d) of the Securities and Exchange Act on the date he was terminated); *Lerbs v. Bucca di Beppo Inc.*, 2004-SOX-8 at 10 (ALJ June 15, 2004) (the date of the Employer's retaliatory act determines whether the Act applies). *Cf., Gilmore v. Parametric Tech, Corp*., 2003-SOX-1 (ALJ February 6, 2003) (the Act has no retroactive effect); *Kunkler v. Global Futures & Forex Ltd*., 2003-SOX 6 (ALJ April 24, 2003) (same); *McIntyre v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 2003-SOX 23 (ALJ January 16, 2004) (same).

The adverse employment actions alleged by Mr. Fuqua in this claim took place after SVOX AG was acquired by Nuance. As a corporation subject to SOX, Nuance is liable for actions taken by its subsidiaries. Clearly, SVOX AG was not a publicly traded company at the time Mr. Fuqua was employed by SVOX AG, or at the time he was fired by SVOX AG. But it is the date of the alleged adverse employment action that determines whether SOX applies. As Mr. Fuqua has alleged adverse employment actions that occurred after he was fired, and after SVOX AG was acquired by Nuance, his claims are covered by SOX.

Whether Mr. Fuqua's allegations state a claim under SOX

Section 806 of the Act prohibits covered employers and individuals from retaliating against employees because they provided information or assisted in investigations related to listed categories of fraud or securities violations. The statute provides that an employer may not "discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment" because the employee engaged in

[4] In fact, Mr. Fuqua's November 16, 2012 complaint, which was dismissed by Judge Purcell and is currently on appeal, involved the same parties, with the exception of Ms. Inskeep, and the same actions that are the basis of Mr. Fuqua's complaint in the instant matter.

protected activity. 18 U.S.C. § 1514A(a). The SOX implementing regulations state that a company may not "discharge, demote, suspend, threaten, harass or in any other manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment" for engaging in protected activity. 29 C.F.R. § 1980.102(a). The Administrative Review Board ("ARB") has stated that SOX's language "bespeaks a clear congressional intent to prohibit a very broad spectrum of adverse action against SOX whistleblowers." *Menendez v. Halliburton, Inc.*, ARB Nos. 09-002, -003, ALJ No. 2007-SOX-005, at 15 (ARB Sept. 13, 2011) (citing *Hendrix v. Am. Airlines*, ALJ Nos. 2004-AIR-010, 2004-SOX-023, slip op. at 14, n. 10 (ALJ Dec. 9, 2004)).

The ARB has stated that adverse action "refers to unfavorable employment actions that are more than trivial, either as a single event or in combination with other deliberate employer actions alleged." *Menendez*, ARB Nos. 09-002, -003, at 17 (quoting *Williams*, ARB No. 09-018, slip op. at 12-15). The employer's action must be of such a degree as "would deter a reasonable employee from engaging in protected activity." *Menendez*, ARB Nos. 09-002, -003, at 18; *see also Hirst v. Se. Airlines, Inc.*, ARB Nos. 04-116, -160, ALJ No. 2003-AIR-47 (ARB Jan. 31, 2007).

The ARB has also noted that "terms and conditions of employment" are "not significant limiting words and should be construed broadly within the remedial context of Section 806." *Menendez*, ARB Nos. 09-002, -003 at 18. According to the Board: "Under Section 806, the language 'in the terms and conditions of employment' does not limit Section 806's intended protection to economic or employment-related actions." *Ibid*.

DISCUSSION

Mr. Fuqua's allegations in this claim are essentially the same as his allegations in his November 16, 2012 claim, which was dismissed by Judge Purcell on November 27, 2013. Mr. Fuqua's allegations of retaliation fall into two broad categories: actions taken by the Respondents in connection with Mr. Fuqua's attempt to recover back wages, and actions taken by the Respondents in attempting to compel arbitration of Mr. Fuqua's SOX related claims in his civil suit.

Thus, Mr. Fuqua alleges that the Respondents repeatedly violated the Illinois Wage Payment and Collection Act concerning his owed wages, falsely denied the validity of his wage claims, withheld his owed wages, attempted to compel arbitration of claims in violation of Section 1514A(e), and violated valid court orders. Specifically, he claims that:

1. On July 3, 2013, Respondents falsely denied the validity of his claim for owed wages in a written statement to the U.S. Department of Labor.
2. On July 3, 2013, Respondents Inskeep and SVOX AG filed an arbitration brief with the American Arbitration Association (AAA).
3. Subsequently, Ms. Inskeep and SVOX AG continued to communicate with the AAA in violation of stay orders.
4. On October 29, 2013, Mr. Soseman falsely denied that he was owed wages.

5. On September 27, 2013, Ms. Inskeep and SVOX AG falsely denied that he was owed wages.

Complainant's complaint at 2-3.

Mr. Fuqua's complaint reflects that he is again alleging, as he did in his claim before Judge Purcell, that the Respondents have withheld wages in retaliation for his protected activity. Mr. Fuqua argues that the Respondents are each personally liable for his wages, and that each day that the Respondents withheld payment of his owed wages constitutes a distinct and separate violation. This precise claim was explicitly rejected by Judge Purcell, who stated that

> Complainant was given notice of SVOX's intent to terminate him as early as October 2009 and actually knew in January 2010 that SVOX was withholding payment of his wages for that month. [*citation omitted*] However, he did not bring this claim before OSHA until November 16, 2013. Assuming that Respondents do owe Complainant for his January 2010 wages, and that Respondents have refused, and continue to refuse, to pay him, the continued refusal to pay Fuqua does not constitute a "discrete adverse act." [*citation omitted*] Complainant had clear knowledge of Respondent's actions in January 2010, but waited more than 180 days to bring his OSHA complaint. Therefore, Complainant's wage claims will be dismissed as untimely.

Yet despite the issuance of Judge Purcell's Order dismissing his claim, and his specific finding that Mr. Fuqua's claims with respect to the Respondent's alleged refusal to pay him allegedly owed wages were not timely, less than a month later, Mr. Fuqua made the same claim in his December 22, 2013 filing with OSHA.

I find that any claim by Mr. Fuqua that the Respondents have refused to pay him wages in retaliation for protected activity is not timely, as it was made almost four years after Mr. Fuqua received notice of SVOX's intent to terminate him in October 2009, and when he actually knew, in January 2010, that SVOX was withholding payment of his wages.

In a slight variation on this theme, and perhaps in an attempt to bring his claim within the SOX time limits, Mr. Fuqua also alleges that the Respondents engaged in retaliation by "*falsely denying*" the validity of his wage claims in various venues. I note that each of the "false denials" that Mr. Fuqua claims as retaliation under SOX occurred in the context of the Respondents' response in a pending legal proceeding initiated by Mr. Fuqua. Again, even if I were to assume that the Respondents' denials of the validity of Mr. Fuqua's wage claims were "false," Mr. Fuqua has not alleged any facts to show how these activities could or did affect any of the terms and conditions of his employment with SVOX. In other words, they did not constitute adverse action under SOX.[5]

[5] Mr. Fuqua's claim that it is not a "strict requirement" that an adverse action, in this case the alleged false denial of a wage claim, be related to the terms and conditions of employment, is misplaced. Complainant's Response at 8. While the ARB has directed that the phrase be construed broadly, it is still a requirement that, in order to be considered an "adverse action" under SOX, the alleged activities could or did affect the terms and conditions of employment with the employer.

In his complaint that was considered by Judge Purcell, Mr. Fuqua alleged that SVOX engaged in adverse action by initiating and continuing frivolous legal actions against him, in that SVOX filed a series of actions aimed at seeking to compel him to arbitrate his SOX-related dispute in the Illinois state courts. Judge Purcell found that Mr. Fuqua's claims of "frivolous legal action" did not constitute adverse actions under SOX because he did not show how the legal actions could or did affect any of the terms and conditions of his employment with SVOX. Nor did Mr. Fuqua offer any facts showing that the lawsuits amounted to "blacklisting," or that the lawsuits otherwise interfered with Mr. Fuqua's ability to obtain future employment.

Yet within a month of Judge Purcell's dismissal, Mr. Fuqua filed the instant complaint with OSHA, making essentially the same allegations – that Respondents have repeatedly attempted to compel him to arbitrate "various claims." Again, apparently in an effort to bring his claims within the SOX time limits, Mr. Fuqua alleged that on July 3, 2013, the Respondents filed an arbitration brief with the AAA, and subsequently continued to communicate with the AAA in violation of two stay orders.

These claims are nothing but an updated version of the claims that were dismissed by Judge Purcell in his November 27, 2013 Order. Thus, Judge Purcell found that Mr. Fuqua's claims of "frivolous legal action" (which included a "series of actions aimed at seeking to compel Mr. Fuqua to arbitrate the SOX-related dispute") did not constitute adverse actions under SOX because he did not show how these legal actions could or did affect any of the "terms and conditions" of his employment, or how they interfered with his future employment opportunities. Judge Purcell found that Mr. Fuqua had failed to allege any facts that would show how SVOX's subsequent legal actions to enforce the arbitration provision of his employment agreement affected the terms and conditions of his employment with SVOX.[6]

Similarly, even assuming that the Respondents are attempting to compel Mr. Fuqua to arbitration in connection with "various claims," or even that the Respondents are violating court orders in connection with such arbitration, Mr. Fuqua has not alleged any facts to show how these activities could or did affect any of the terms and conditions of his employment with SVOX. *See, e.g., Farnham v. International Manufacturing Solutions,* ARB No. 07-095 (ARB February 6, 2009) (Respondent's filing of a civil suit against the complainant, alleging tortious interference with the respondent's loan transactions, slander, and intentional infliction of emotional distress, was not an adverse employment action under SOX; the complainant failed to establish how the filing of a civil suit injured him in any way in relation to the terms and conditions of his employment); *Levi v. Anheuser Busch Companies Inc.*, ARB Nos. 06-102, 07-020, 08-006 (ARB April 30, 2008) (SOX complaint based on the claim that respondent's counsel allegedly made false statements in a motion to dismiss an earlier complaint filed by the complainant did not allege adverse employment action under SOX); *Pittman v. Siemens AG*, 2007 SOX 15 (ALJ July 6, 2007 (Complainant alleged that respondent filed anti-SLAPP claim against him in regard to a defamation suit in state court, in retaliation for filing his SOX claim

[6] Moreover, as argued by counsel, Mr. Fuqua cannot show that Ms. Inskeep, outside counsel retained by Nuance long after the termination of his employment, could be liable for owed wages under the Illinois wage statute, or that a claim under that statute could form the basis for relief under SOX.

with OSHA; complainant not employee of respondent for more than one and a half years, and did not show that he was blacklisted or that the suit interfered with his employment).

In this case, I find that Mr. Fuqua has failed to allege any facts that would show how the Respondent's legal actions, including its denials of his wage claims and its efforts to seek arbitration of these claims, more than three years after he left the employ of SVOX AG, affected the terms and conditions of, or in any way interfered with his employment with SVOX AG. The activities complained of by Mr. Fuqua did not constitute adverse action under SOX.

Mr. Fuqua's Allegations Against Thomas Soseman

Mr. Soseman has separately submitted a dispositive motion. Mr. Fuqua claims that Mr. Soseman "falsely denied" the validity of his wage claim on July 3, 2013, in his written statement submitted to the Department of Labor in response to Mr. Fuqua's Second Amended Complaint in 2013 SOX 46. Mr. Fuqua also alleges that Mr. Soseman's October 29, 2013 Response to Mr. Fuqua's Emergency Motion to Bar Arbitration was a denial of the validity of his claim for wages.

As background, counsel for Mr. Soseman notes that Mr. Fuqua previously brought suit against Mr. Soseman in federal and state courts for his allegedly unpaid wages. The case in federal court was dismissed as to Mr. Soseman on jurisdictional grounds.[7] With respect to the state case, Mr. Soseman filed a motion to dismiss, and on March 7, 2013, the Circuit Court of Cook County, Illinois, ruled that, as SVOX's attorney, Mr. Soseman was covered by a qualified privilege, and absent a showing of actual malice, could not be held liable for the alleged actions of his client. The dismissal of this claim against Mr. Soseman is currently pending appeal before the First District Appellate Court of Illinois.

Meanwhile, in connection with his November 16, 2012 complaint to OSHA, Mr. Fuqua filed a Second Amended Complaint on May 30, 2013, alleging additional adverse actions. Mr. Fuqua's Second Amended Complaint did not allege that Mr. Soseman participated in any of the alleged adverse employment actions, but attempted to impute SVOX's alleged failure to pay Mr. Fuqua wages to Mr. Soseman, based on his role as an agent of SVOX. As noted above, this basis of liability had been specifically rejected by the state court two months previously.

Counsel for Mr. Soseman submitted a response to Mr. Fuqua's Second Amended Complaint on July 3, 2013, arguing that Mr. Fuqua's contentions were either time-barred, or did not rise to the level of "adverse employment action" under the Act.

[7] Mr. Fuqua claims that "Federal District Judge Guzman found that Mr. Soseman does not have immunity under that statute." Complainant's Response at 7. Mr. Fuqua attached the docket entry for this case, which reflects that the Respondents removed Mr. Fuqua's state court claim to federal court, invoking diversity jurisdiction. Judge Guzman granted Mr. Fuqua's motion to remand, noting that there was no diversity, and thus no jurisdiction. In a footnote, Judge Guzman indicated that he rejected the Respondents' argument that Mr. Soseman's status as a lawyer made him immune from suit under the IWPCA. He made no specific finding on whether Mr. Soseman had immunity in the claim before the court. As noted above, and as Mr. Fuqua failed to mention, the state court subsequently ruled that, absent a showing of actual malice, Mr. Soseman was not liable for the actions of his client.

On September 30, 2013, Mr. Fuqua filed an Emergency Motion to Bar Arbitration in his first claim, with no explicit allegations against Mr. Soseman as being involved in any of the alleged conduct. Mr. Fuqua did not mention his claim for unpaid wages in this Emergency Motion. Mr. Soseman's counsel filed a response on October 29, 2013, on behalf of every respondent but Mr. Soseman. Because nothing in Mr. Fuqua's Emergency Motion mentioned his allegation of unpaid wages, nothing in this response referred to these claims. [8]

Mr. Soseman filed a separate response to Mr. Fuqua's Emergency Motion on October 29, 2013, essentially adopting the response filed by the other respondents on October 29, 2013. As Mr. Fuqua's Emergency Motion did not mention his allegedly unpaid wages, Mr. Soseman's response did not mention Mr. Fuqua's claim of unpaid wages.

On December 14, 2013, Mr. Fuqua filed the instant claim, alleging that Mr. Soseman's response to his Second Amended Complaint, filed on July 3, 2013, "falsely denied" the validity of his wage claim, and that Mr. Soseman's October 29, 2013 Response to his Emergency Motion was a denial of the validity of his claim for wages.

Again, as discussed above, in his November 27, 2013 Order dismissing Mr. Fuqua's first claim, Judge Purcell found that Mr. Fuqua's wage claims were untimely, because he knew by January 2010 that SVOX was withholding payment of his wages. As discussed above, and also by Judge Purcell, the continued refusal to pay Mr. Fuqua these wages, or their accrual of interest, does not constitute a discrete adverse act.

As Mr. Soseman's counsel notes, while SOX contemplates a "wide and nebulous range" of actionable adverse employment actions, there is nothing to suggest that defending against a whistleblower retaliation complainant, pursuant to the statutory and regulatory requirements of SOX, could validly serve as a basis for a subsequent whistleblower retaliation complaint.

Mr. Soseman acknowledges that on July 3, 2013, there was a denial that Mr. Fuqua was owed any outstanding wages. But with respect to Mr. Soseman, this was hardly a "false denial" as contemplated under the Illinois Wage Payment and Collection Act. Thus, the Cook County Circuit Court of Illinois had already determined that Mr. Soseman was not liable for any wages, and thus any "denial" in the July 3, 2013 submission was correct – Mr. Soseman is not liable for Mr. Fuqua's wages as a matter of law.

Mr. Soseman argues that Mr. Fuqua has falsely alleged that something in the responses to his Emergency Motion in the previous case contained a denial of his wage claims. As Mr. Soseman points out, his October 29, 2013 Response, and the response of the other Respondents, "unequivocally establish the absolute falsity of Complainant's allegation." Moreover, Mr. Soseman argues that his substantive due process rights to defend against Mr. Fuqua's Emergency Motion cannot and should not be construed as an "adverse employment action." These were

[8] Contrary to Mr. Fuqua's claim, the question of whether Judge Taylor's order staying arbitration was or was not valid is not a genuine issue of material fact, appropriate to be considered at the hearing in this claim. See Complainant's Response filed June 2, 2014, at 8. Even assuming that Judge Taylor's order was valid, any alleged attempts by the Respondents to violate it in some fashion would not constitute adverse action under SOX.

legitimate, good-faith required responses to claims raised by Mr. Fuqua as part of an adversarial procedure, and do not rise to the level of actionable "adverse employment actions" under SOX.

I have reviewed the responses of the Respondents to Mr. Fuqua's Emergency Motion, and I find that there is nothing in these responses that can be construed as a "denial" of Mr. Fuqua's wage claims. But even if there were, as discussed above, Mr. Fuqua has not alleged any facts to show how such "denials" could or did affect any of the terms and conditions of his employment with SVOX. In other words, they would not constitute adverse action under SOX.

Requests for Sanctions

Respondents argue that an award of a reasonable attorney's fee, not to exceed $1,000.00, as provided in 29 C.F.R. § 1980.109(2), is warranted. With respect to Ms. Inskeep, Respondents note that she is an attorney who represents Nuance in connection with Mr. Fuqua's post-employment actions. Mr. Fuqua alleges that Ms. Inskeep's submission of SVOX USA's brief to the American Arbitration Association, and Nuance's responses to his previous complaint and amendments, was "adverse action" under the Act.

As counsel has pointed out, Mr. Fuqua is well aware that, absent a showing of malice, the qualified privilege recognized under Illinois law prevents Ms. Inskeep from being personally liable for actions taken on behalf of her clients during the course of litigation. As discussed in more detail above, the Cook County Circuit Court dismissed similar charges that Mr. Fuqua filed against Mr. Soseman based on this qualified privilege.

Ms. Inskeep's counsel argues that Mr. Fuqua named Ms. Inskeep, knowing that her actions were privileged, for no other reason than to harass and punish her for representing Nuance in the various actions that Mr. Fuqua has brought. Counsel argues that this bad faith conduct is a waste of judicial resources, and has cost the respondents substantial fees in responding to these frivolous claims.

Mr. Fuqua alleges that Ms. Inskeep acted as an agent of Nuance and SVOX AG. As pointed out by her counsel, Ms. Inskeep has acted solely in her capacity as a lawyer retained to represent Nuance in post-employment legal actions brought by Mr. Fuqua; she has not acted as an agent of any "employer" of Mr. Fuqua with respect to his employment. Moreover, Mr. Fuqua was never employed by Nuance, and SVOX AG was a private company not covered by SOX during Mr. Fuqua's employment with SVOX AG. Ms. Inskeep was never an agent of an employer covered by SOX with respect to Mr. Fuqua.

As discussed above (and as found by Judge Purcell less than one month before Mr. Fuqua filed this claim), I have found that Mr. Fuqua has not alleged facts that, even if accepted as true, would constitute adverse action under SOX. Thus, regardless of Ms. Inskeep's status, Mr. Fuqua has not stated a claim against her under SOX. More importantly, I find that Mr. Fuqua's charges against Ms. Inskeep were brought in bad faith, and solely for the purposes of harassment. Ms. Inskeep does not work for the Respondents; she has never been in any kind of employer/employee relationship with Mr. Fuqua. Her sole connection to this case is her status as an attorney, representing her client Nuance (which did not employ Mr. Fuqua either) in

defending against Mr. Fuqua's claims. Yet Mr. Fuqua named her in this complaint, accused her of engaging in criminal conduct, and forced her to retain counsel and defend herself against his baseless claims.

I find that Mr. Fuqua's claims against Mr. Soseman are frivolous, and that they were brought in bad faith. I also find that Mr. Fuqua's complaints against Mr. Soseman are based solely on Mr. Soseman's defense of himself in Mr. Fuqua's previous complaint, which is an abuse of the rights and remedies provided under SOX.[9] The charges he has leveled against Mr. Soseman were resolved by Judge Purcell, and are pending appeal before the ARB. As pointed out by Mr. Soseman, Mr. Fuqua materially misrepresented the contents of documents that are public record (Mr. Soseman's response to Mr. Fuqua's emergency order to stay arbitration), and libelously accused Mr. Soseman of engaging in criminal conduct, claiming that Mr. Soseman's actions were a felony under the Illinois Wage Payment Act. Mr. Soseman has been forced to retain counsel and prepare a defense to litigation that never should have been instituted.

With respect to the remaining Respondents, I also find that Mr. Fuqua brought his complaint, which is completely baseless and frivolous, in bad faith and for the purposes of harassment. It was clear to Mr. Fuqua, when Judge Purcell issued his Order dismissing his claim on November 27, 2013, that his claim for unpaid wages was time-barred, and that his allegations regarding the Respondents' activities in connection with the state court claims for wages did not qualify as adverse action under SOX. As noted above, the allegations in this claim, filed less than a month after Judge Purcell's determination, are essentially the same. Mr. Fuqua has restyled his wage complaints as "false denials" of owed wages, apparently in an attempt to bring his claims within the statute of limitations, and has updated his allegations that the Respondents retaliated against him for filing his SOX claims by having the temerity to defend themselves in connection with the suit Mr. Fuqua brought in state court, and his earlier SOX claim. But regardless of when these alleged actions occurred, as he was on notice from Judge Purcell, they do not constitute adverse action.

CONCLUSION

Based on the foregoing, I find that, even viewed in the light most favorable to the Complainant, Mr. Fuqua's claims do not constitute adverse action under SOX. Mr. Fuqua has not shown or even alleged that the actions taken by the Respondents, more than three years after his employment with SVOX AG, affected the terms and conditions of his employment, amounted to blacklisting, or otherwise impaired his ability to find other employment.

Accordingly, IT IS HEREBY ORDERED that Mr. Fuqua's complaint under the Sarbanes-Oxley Act is dismissed.

IT IS FURTHER ORDERED that Mr. Fuqua pay to the Respondents the sum of $1,000.00 as attorneys' fees, pursuant to Title 29 C.F.R. § 1980.109(2).

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[9] Under Mr. Fuqua's theory, the only way the Respondents could avoid liability would be to concede that his SOX claims, and his state court claim, were valid. In other words, any attempt to present a defense against his claims would trigger their liability under SOX.

SO ORDERED.

Digitally signed by Linda Chapman
DN: CN=Linda Chapman,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Washington, S=DC, C=US
Location: Washington DC

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, 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).