



Issue Date: 20 May 2014

Case No.: 2014-SOX-00007

In the Matter of:

BRIAN MOORE,  
Complainant,

v.

NEW YORK LIFE INSURANCE CO.,  
Respondent.

**DECISION AND ORDER APPROVING MOTION TO WITHDRAW**

This proceeding arises from a claim of whistleblower protection under Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VIII of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A and Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203; 12 U.S.C. 5567. In this case, the Complainant, Brian Moore, requested a hearing by the Office of Administrative Law Judges (“OALJ”) because he objected to a finding by the Occupational Safety and Health Administration (“OSHA”) that neither his Employer, New York Life Insurance Company, or he, fall within the scope of coverage of these statutes. The case was subsequently transferred to the undersigned for hearing and decision.

On May 5, 2014, the undersigned received “Complainant’s Motion to Withdraw Objections.” This pleading stated that “Mr. Moore moves to withdraw his objections on the basis that neither OSHA nor this Office has jurisdiction over Mr. Moore’s objections pursuant to an arbitration clause in Mr. Moore’s employment agreement, as articulated in the recent case of *Murray v. UBS Securities, LLC.*, No. 12-cv-05914 (S.D. N.Y. January 27, 2014)(finding the Anti-Retaliation provision in Dodd-Frank does not include any prohibition against predispute arbitration agreements).” On May 19, 2014, I received a “Non-Opposition to Complainant’s Motion to Withdraw Objections” from the Respondent.

On February 24, 2014, the undersigned conducted a telephone conference to discuss preliminary case issues, initiate discovery and set a hearing date and location. The Respondent indicated a desire to have a period of preliminary paper discovery followed by the opportunity for it to file a Motion to Dismiss. At the time of the call the Complainant’s counsel also acknowledged that there was no viable Sarbanes-Oxley claim, and that the Complainant would be proceeding exclusively under 15 U.S.C. § 78u-6(h), (the anti-retaliation provision) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This is pertinent to the approval of the instant Motion to Withdraw as, although both the Dodd-Frank Act’s whistleblower

amendments to the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act both contain provisions that render pre-dispute arbitration agreements unenforceable, Section 78u of Dodd-Frank does not include this prohibitory language. *See Murray* at 21; *Ruhe v. Masimo Corp.*, No. SACV 11-00734-CJC, (Not Reported in F.Supp.2d) 2011 WL 4442790, at \*4 (C.D. Cal. Sept. 16, 2011).

Section 29 C.F.R. 1980.111(c) provides in pertinent part:

At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings or order, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary.

As the Complainant has indicated his intent to withdraw his objections to OSHA's findings based on the presence of a binding contractual pre-dispute arbitration agreement (which the undersigned has not reviewed), and the lack of objection from the Respondent, therefore, pursuant to 29 C.F.R. 1980.111(c):

**IT IS ORDERED** that the Complainant's objections to the October 22, 2013, findings of the Occupational Safety and Health Administration are withdrawn and this matter is **DISMISSED** with prejudice.

PETER B. SILVAIN, JR.  
Administrative Law Judge