

**U.S. Department of Labor**

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**Issue Date: 19 June 2014**

Case Number: 2014-SOX-00025

In the Matter of:

**SANJAY PANSE,**  
*Complainant*

v.

**BASF CORPORATION,**  
*Respondent*

**ORDER OF DISMISSAL**

This proceeding purportedly arises 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. § 1514A (“SOX”).

On November 15, 2013, Complainant Sanjay Panse (“Complainant” or “Panse”), who is acting *pro se*, filed a complaint with the Occupational Safety and Health Administration (“OSHA”), U.S. Department of Labor, New York Regional Office. Complainant alleged that Respondent BASF Corporation (“Respondent” or “BASF”) terminated him after he reported violations of certain data privacy laws. OSHA investigated the matter under the SOX statute and regulations and issued its findings on March 28, 2014. OSHA dismissed the complaint based on its findings that Respondent was not an employer, and Complainant was not an employee as required under SOX, 18 U.S.C. § 1514A.

On April 30, 2014, Complainant filed a letter with the Office of Administrative Law Judges (“Office”), U.S. Department of Labor. Attached to his letter were copies of his original complaint and other related documents. On May 2, 2014, I issued a Notice of Docketing and Order to Show Cause, directing the parties to respond in writing and explain why this case should not be dismissed for lack of jurisdiction. On June 6, 2014, BASF filed Respondent’s Response to the U.S. Department of Labor’s May 2, 2014 Order to Show Cause. To date, Complainant has failed to respond to my Order or to provide any evidence sufficient to establish jurisdiction under SOX.

As stated in my Order to Show Cause, Section 806 of the Sarbanes-Oxley Act and the implementing regulations at 29 C.F.R. Part 1980 prohibit publicly-traded companies from retaliating against an employee who provides information to a supervisory employee, a Federal agency, or Congress, alleging a violation of any Federal law relating to various enumerated fraud

statutes as well as any rule, regulation or Federal statute relating to fraud against shareholders. 18 U.S.C. § 1514A(a); 29 C.F.R. §§ 1980.101(f), 1980.102(b).

Complainant's November 15, 2013 letter to this Office expressly states that "I am not filing a complaint about SOX violations, since I am aware that BASF may not have to comply with SOX regulations." The records attached to his letter similarly suggest that Complainant has never alleged Respondent violated SOX. Rather, it appears from all the documents that he reported violations of certain data privacy laws, age discrimination laws, and the Americans with Disabilities Act. On this basis alone, it thus seems that OALJ is not the appropriate forum for addressing Complainant's allegations against BASF.

In response to my Order to Show Cause, Respondent states: "The Complaint should be dismissed because BASF is not subject to jurisdiction under SOX. BASF is not ... a company with a class of securities registered under section 12 of the Security Exchange Act of 1934 (15 U.S.C. § 781) or required to file reports under section 15(d) of the Securities Exchange Act of 1934." As such, "BASF is not subject to SOX because it is not a company within the meaning of 19 U.S.C. 1514A."

In light of the foregoing, there are two bases for dismissing Panse's SOX complaint, *i.e.*, his failure to comply with my Order to Show Cause and his failure to state a claim upon which relief may be granted.

OALJ's regulations provide at 29 C.F.R. § 18.6(d)(2)(v) that:

If a party or an officer or agent of a party fails to comply . . . with an order, . . . the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Complainant has failed to respond to my May 2, 2014 Order to Show Cause. That alone justifies dismissal of his complaint pursuant to § 18.6(d)(2)(v).

In *Sylvester v. Parexel Int'l LLC*, ARB No.07-123, ALJ No. 2007-SOX-00039 (ARB May 25, 2011), the Administrative Review Board noted that motions to dismiss whistleblower complaints under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted are highly disfavored. According to the Board, "SOX claims are rarely suited for Rule 12 dismissals" inasmuch as they "involve inherently factual issues such as 'reasonable belief' and issues of 'motive.'" *Id.*, slip op. at 13. However, the Board clearly recognized that "ALJs are entitled to manage their caseloads and decide whether a particular case is so meritless on its face that it should be dismissed in the interests of justice," *ibid.*, leaving open the application of Fed. R. Civ. P. 12(b)(6) as a vehicle for dismissing complaints.

As noted above, Complainant himself has stated that he never intended to file a SOX complaint and that he recognizes Respondent may not be covered under the statute. In its response to my Show Cause Order, Respondent states that it is neither registered under section 34 of the Securities Act, nor is it required to file reports under the Securities Exchange Act. There is, therefore, simply no evidence of record which demonstrate that Respondent is an employer within the meaning of 18 U.S.C. § 1514A. Panse's complaint is thus subject to dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

Based on the foregoing, IT IS HEREBY ORDERED that the whistleblower complaint of Complainant Sanjay Panse under 18 U.S.C. § 1514A is DISMISSED pursuant to 29 C.F.R. § 18.6(d)(2)(v) as well as Fed. R. Civ. P. 12(b)(6).

**SO ORDERED.**

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge