

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

**Issue Date: 24 February 2017**

CASE NO.: 2015-SOX-00034

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*In the Matter of:*

THOMAS RIMINI,  
*Complainant,*

v.

J.P. MORGAN CHASE & COMPANY,  
*Respondent.*

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**ORDER DENYING COMPLAINANT’S MOTION FOR RECONSIDERATION**

This matter 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. § 1514A and the procedural regulations found at 29 C.F.R. Part 1980 (“SOX” or “the Act”). On September 9, 2016, Respondent filed a *Motion for Summary Decision* with accompanying memorandum and exhibits in support thereof. On January 18, 2017, I issued a *Decision and Order Granting Respondent’s Motion for Summary Decision* (“D&O”) finding Respondent established that there is no genuine issue of material fact as to an essential element of Complainant’s claim – whether he suffered an adverse action.

On January 24, 2017, Complainant filed a *Motion for Reconsideration* (“Motion”) pursuant to the Federal Rules of Civil Procedure, Rule 60(b)(1), (2) & (6),<sup>1</sup> requesting the Court

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<sup>1</sup> The Federal Rules of Civil Procedure, Rule 60(b)(1)-(6) provide:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on

vacate the January 18, 2017 *Decision and Order*.<sup>2</sup> Motion at 1-2. In support, Complainant argues Respondent produced an e-mail dated November 8, 2011, on October 25, 2016, after the close of discovery, which corroborates Complainant's allegations of blacklisting against Respondent. *Id.* The Motion avers this e-mail, not previously considered by the Court, precludes a grant of summary judgment as it establishes an essential element of Complainant's cause of action – that he was blacklisted by Respondent. *Id.*

On February 7, 2017, Respondent filed a *Response in Opposition to Complainant's Motion for Reconsideration of Order Granting Respondent Summary Decision* ("Respondent's Opposition"), with supporting documentation, citing three separate grounds in opposition to Complainant's Motion. Respondent principally asserts the Court lacks jurisdiction to grant Complainant's Motion because Complainant also filed an appeal with the United States Department of Labor's Administrative Review Board ("ARB"). Respondent's Opposition at 4. Attached to Respondent's Opposition is a copy of Complainant's formal appeal to the ARB dated February 1, 2017.<sup>3</sup> Accordingly, I do not have jurisdiction to rule on the Motion while Complainant's appeal is currently pending before the ARB. 29 C.F.R. § 18.94; *Steffenhagen v. Securitas Sverige, AR*, 2003-SOX-00024 (ALJ Aug. 13, 2004).

Assuming, *arguendo*, Complainant's appeal with the ARB did not divest my authority to rule on the Motion, I note the November 8, 2011 e-mail does not establish Complainant suffered an adverse action within the 180-day statute of limitations period preceding the July 7, 2015 Occupational Safety and Health Administration complaint. As detailed in my April 20, 2016 *Order Granting Respondent's Motion to Dismiss in Part and Granting in Part* ("Order"), I dismissed Complainant's allegations of adverse action that transpired in 2011. Order at 6 n.6. In accordance with 18 U.S.C. § 1514A(b)(2)(D),<sup>4</sup> I ruled that only purported incidents of adverse

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an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b)(1)-(6).

<sup>2</sup> The regulations under SOX do not address motions for relief from a final judgment, order or proceeding. *See* 18 U.S.C. § 1514A; 29 C.F.R. § 1980.107. When no specific regulation applies, the Act adopts this Office's rules of practice and procedure. 29 C.F.R. § 1980.107(a). Those rules also do not address motions for relief from orders. 29 C.F.R. § 18. When our Office's rules are silent and no other applicable statute, regulation or executive order applies, the Federal Rules of Civil Procedure govern. *See id.* at § 18.10.

<sup>3</sup> The Court has not yet received notice of Complainant's appeal from the ARB. Respondent provided the Court with a copy of Complainant's appeal filed with the ARB dated February 1, 2017. Respondent's Opposition, Ex. A.

<sup>4</sup> A SOX claim must be filed "180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation." 18 U.S.C. § 1514A(b)(2)(D).

action occurring sometime within the 180-days before July 7, 2015 will be considered. *Id.* at 6. My January 18, 2017 *Decision and Order* reiterated preclusion of several alleged adverse actions from consideration due to untimeliness. D&O at 12 n.8.

I also note Complainant's Motion fails to surpass the high threshold required by Rule 60(b). Generally, courts examine the following four factors in considering Rule 60(b) motions: "(1) the motion's timeliness; (2) whether exceptional circumstances justify extraordinary relief; (3) whether the movant can show a potentially meritorious claim or defense, which, if proven, could bring her success at trial; and (4) the likelihood of unfair prejudice to the opposing party." *Bouret-Echevarria v. Caribbean Aviation Maint. Corp.*, 784 F.3d 37, 43 (1st Cir. 2015) (internal citations omitted). Relief sought under Rule 60(b)(6) requires the movant show exceptional circumstances justifying extraordinary relief. *Id.* at 44 (internal citations omitted).

Complainant received the e-mail from Respondent on October 25, 2016, well before the issuance of my January 18, 2017 *Decision and Order*, but waited three months to submit the e-mail to the Court. Further, Complainant's reliance on the November 2011 e-mail wholly ignores my previous ruling barring alleged adverse actions from consideration outside of the 180-day statute of limitations. Thus, I decline to find that Complainant's Motion presents exceptional circumstances warranting relief under Rule 60(b)(1), (2) and/or (6). Therefore, Complainant's Motion is **DENIED**.

**SO ORDERED.**

**TIMOTHY J. McGRATH**  
Administrative Law Judge

Boston, Massachusetts