



Issue Date: 06 September 2017

Case No.: 2017-SOX-00039
OSHA No.: 2-4173-15-220

In the Matter of:

YAN LI,
Complainant,

v.

The BANK OF NEW YORK (BNY) MELLON,
Respondent.

ORDER OF DISMISSAL AND CANCELLATION OF HEARING

On July 16, 2015, Mr. Yan Li (“Complainant”) filed a formal complaint with the U.S. Department of Labor (“DOL”), Occupational Safety and Health Administration (“OSHA”), alleging a violation of the employee protection provisions in Section 806 of the Sarbanes-Oxley Act of 2002, (“SOX”) and the Consumer Financial Protection Act (“CFPA”). These Acts generally prohibit company retaliation for lawful cooperation with investigations and protect employees who suffer adverse employment actions for reporting allegations of financial fraud. Complainant alleges that he was hired by his former employer, Bank of New York (BNY) Mellon (“Respondent”), as a Senior Quantitative Analyst and subsequently terminated on or about May 21, 2015 in retaliation for reporting what he believed to be instances of investment fraud. After conducting an investigation, the Regional Administrator for OSHA’s New York, New York Regional Office issued a final determination letter on May 8, 2017, dismissing the complaint.¹

On June 6, 2017, Complainant filed a letter with the Office of Administrative Law Judges (“OALJ”) of the U.S. Department of Labor objecting to the Secretary’s Findings. In this letter, Complainant also provided notice of his intent to file an original action for de novo review in United States district court.² However, as Complainant had apparently not filed such an action, I

¹ OSHA determined that: Complainant was terminated because of office restructuring in the derivatives trading group; that any protected activity did not contribute in any way to Complainant’s termination; and “there was no reasonable cause to believe respondent violated SOX or CFPA.”

² Under the enforcement provisions of SOX, if the Secretary of Labor has not issued a final decision within 180 days after the filing of the complaint, and the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. 18 U.S.C. § 1514A(b)(1)(B). Similarly, the CFPA provides that if the Secretary of Labor has not issued a final decision within 210 days after the

issued an *Order Suspending Administrative Proceedings Pending Filing of Federal District Court Complaint* on July 25, 2017. Therein, I directed Complainant to notify this Court once an action is filed in United States district court such that the instant administrative adjudication can be dismissed, and refrained from scheduling a formal hearing and setting pre-hearing deadlines until receipt of such notice.³

After receiving no indication that Complainant had yet filed an original action in federal district court, and finding it necessary to move forward with the instant administrative proceeding to facilitate an efficient resolution of this matter, I issued a *Notice of Hearing and Prehearing Order* on August 29, 2017. I informed the parties that a formal hearing before the undersigned would proceed on November 28, 2017 in New York City, New York unless Complainant filed an action in the pertinent United States district court and notified this court as appropriate. By correspondence received on September 5, 2017, Complainant confirmed he exercised his right to pursue his claim in federal district court and attached a copy of the complaint filed in the United States District Court for the Southern District of New York on August 28, 2017, with confirmation of service on Respondent. The United States District Court has assumed jurisdiction of this matter.

Order

Accordingly, it is hereby ORDERED that the complaint filed by Yan Li on July 16, 2015 under the Sarbanes-Oxley and Consumer Financial Protection Acts and pending before the Office of Administrative Law Judges is DISMISSED.

IT IS FURTHER ORDERED that the formal hearing scheduled for November 28, 2017 in New York City, New York is hereby CANCELLED.

SO ORDERED:

STEPHEN R. HENLEY
Administrative Law Judge

date of filing of a complaint, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 12 U.S.C. § 5567(c)(4)(D)(i).

³ A United States district court does not assume jurisdiction until a complaint is filed. *See Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005) (explaining that jurisdiction is conferred on a district court “when a qualifying complainant files his complaint there.”); *see also Despain v. BNSF Ry. Co.*, 186 F. Supp. 988, 991 (D. Ariz. 2016) (Federal Railroad Safety Act). Thus, the OALJ continued to have jurisdiction over the underlying complaint until such time as a complainant is actually filed in a United States district court.