



Issue Date: 02 February 2017

Case Nos.: 2017-SOX-00008
2017-SOX-00009

In the Matters of

JUDITH A. TYSON
MICHAEL J. LUTZ
Complainants

v.

RADIAN GROUP, INC.
Respondent

DECISION AND ORDER OF DISMISSAL

The above-captioned matters arise from complaints filed by Judith A. Tyson and Michael J. Lutz (“Complainants”) against Radian Group, Inc. (“Respondent” or “Radian”) under the employee protection provisions of 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.A. § 1514A (“SOX” or the “Act”) and the procedural regulations found at 29 C.F.R. Part 1980.

On June 30, 2014, Complainant Tyson filed her complaint with the Occupational Safety and Health Administration (“OSHA”) alleging that Respondent failed to renew her contract as subcontractor consultant in retaliation for protected activities under SOX. Complainant Lutz filed his complaint with OSHA on November 5, 2014, alleging that Respondent reassigned him to different job duties which forced him to resign in retaliation for protected activities under SOX.

In letters dated November 15, 2016, OSHA provided each Complainant notice of its completed investigations of these complaints and the Assistant Secretary’s Findings that “there is sufficient evidence to support a charge of discrimination under SOX.” As per the November 15, 2016 notice of the Assistant Secretary’s Findings, OSHA ordered that Respondent pay Complainant Tyson compensatory damages in the amount of \$15,932.00; attorney fees in the amount of \$7,525.00; punitive damages in the amount of \$10,000; OSHA ordered Complainant Lutz compensatory damages in the amount of \$10,000; punitive damages in the amount of \$10,000. OSHA further ordered Respondent to expunge Complainants employment records of any reference to the exercise of their rights under SOX and to refrain from any disparaging remarks or comments to prospective employers or in any employment inquiries; to ensure no future retaliation or discrimination is directed against Complainants or any other employee for initiating SOX or SOX-related proceedings; to post the enclosed notice of violation for 180 days.

In a letter dated December 16, 2016, Respondent filed its objections to the Assistant Secretary's Findings and Preliminary Order in each of these matters and requested a hearing before an Administrative Law Judge. The Office of Administrative Law Judges received those objections on December 20, 2016 and these matters were then assigned to the undersigned for adjudication.

An Order To Show Cause was issued on January 3, 2017, directing the parties to show cause as to why the proceedings in these two cases should not be consolidated. The parties were given 15 days from its receipt to respond to the January 3, 2017 Order To Show Cause.

No response to the Order To Show Cause was received from Complainants. Respondent however indicated, by letter from counsel dated January 9, 2017, that it did not oppose the consolidation of these matters, but requests (1) withdrawal of its objections to the Assistant Secretary's Findings and (2) dismissal of these complaints.

Respondent's January 9, 2017 letter will be considered both a written withdrawal of Respondent's objections in these matters, as well as a request for dismissal. To date, Complainants have not submitted any response to Respondent's request for dismissal based on withdrawal of its objections to the Assistant Secretary's Findings. Complainants' non-response may be considered a waiver of any opposition to Respondent's request. *See* 29 C.F.R. § 18.70(c).

Pursuant to 29 C.F.R. § 1980.111(c), at any time before the findings or order become final, a party may withdraw objection to the findings or order by filing a written withdrawal with the administrative law judge, or, if the case is on review, with the Administrative Review Board. Twenty-nine C.F.R. § 1980.111(c) further provides that (1) the judge or the Board, as the case may be, will determine if the withdrawal will be approved and (2) if the request to withdraw objections to the Assistant Secretary's findings and order is approved, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary.

In these matters, the Assistant Secretary's Findings are not final and a written withdrawal has been filed. Therefore, approval of the withdrawal is appropriate. Accordingly, good cause having been shown, Respondent's request for withdrawal will be granted and these cases will be dismissed.

IT IS ORDERED that Respondent's withdrawal of objections is approved and these cases are dismissed with prejudice. IT IS FURTHER ORDERED that the Assistant Secretary's Findings and Preliminary Order outlined in the November 15, 2016 letter from OSHA constitute the final order of the Secretary of Labor in these cases.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey