

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 February 2019

Case No.: 2018-SOX-13

In the Matter of:

KIMBERLY K. NEFF,
Complainant,

v.

KEYBANK NATIONAL ASSOCIATION, et al.,
Respondents.

Appearances:

Kimberly K. Neff, Pro Se
North Royalton, Ohio
Complainant

Corey N. Thrush, Esq.
Ogletree Deakins
Cleveland, Ohio
For Respondent KeyBank National Association

Bonnie L. Kristan, Esq.
Littler Mendelson
Cleveland, Ohio
For Respondent Collabera, Inc.

Robert Gusrae, Esq.
Boynton Beach, Florida
For Respondent DCR Workforce

Before: Steven D. Bell
Administrative Law Judge

**ORDER GRANTING RESPONDENTS' MOTIONS FOR SUMMARY DECISION,
DISMISSING CASE AND CANCELLING HEARING**

This case arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. §1514A, as

amended by §922(c) of the Dodd-Frank Act of 2010, Public Law 111-203 (July 21, 2010) and the implementing regulations found at 29 C.F.R. §1980. This matter also arises under the whistleblower protection provisions of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. § 5567(a), and the implementing regulations found at 29 C.F.R. Part 1985.

Procedural History

Kimberly K. Neff (“Complainant”) was terminated from her employment on March 16, 2017. On July 20, 2017, Complainant filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) against KeyBank National Association (“KeyBank”), DCR Workforce, Inc. (“DCR”) and Collabera, Inc. (collectively, “Respondents”). Complainant there alleged that Respondents violated the whistleblower protection provisions of SOX and CFPA. On January 5, 2018, following an investigation, OSHA dismissed Complainant’s claims. On February 2, 2018, Complainant submitted a request for an extension of time to file her Request for Hearing with the Office of Administrative Law Judges of the Department of Labor. The case was assigned to me on February 26, 2018. I established a briefing schedule on Complainant’s Motion for Extension of Time. On March 26, 2018, I granted Complainant’s Motion for Extension of Time to file her Request for Hearing over the objections of KeyBank and DCR.¹

Complainant has not been represented by counsel at any stage of the proceedings before me. I have attempted to supervise this case closely given the complexity of the statutory and regulatory scheme, and Complainant’s unfamiliarity with the substantive law and rules of procedure which control the course of this case. As part of my heightened supervision of this case, I conducted telephone status conferences on May 5, 2018, June 26, 2018, August 8, 2018, August 28, 2018, October 2, 2018,² October 9, 2018, October 25, 2018, November 9, 2018, December 3, 2018, and December 10, 2018. I conducted a telephone motion hearing on December 31, 2018. Some of these conferences lasted more than 1 hour. In almost all of these telephone conferences, I encouraged Complainant to try to obtain counsel to represent her in this case. In all of these telephone conferences, I encouraged Complainant to ask questions, and I attempted to answer all of the questions properly posed by Complainant.³

During these telephone status conferences, counsel for Respondents indicated that they might be filing Motions for Summary Decision. I thus issued an *Order Regarding Motions for Summary Decision* on October 3, 2018. This Order informed Complainant of her obligation to oppose any Motion for Summary Decision with evidence sufficient to create a genuine dispute as to the material facts, and which also cautioned that Complainant’s claims may be dismissed if she did not create an issue of fact by her brief opposing a Motion for Summary Decision. I have twice suggested that Complainant review this *Order Regarding Motions for Summary Judgment*.

¹ Collabera was not an active participant in these proceedings until approximately August 2018.

² Complainant did not participate in this call. A show cause order was issued on October 2, 2018.

³ I note that Complainant believes that I “screamed” at her during one of these telephone conferences. Deposition of Angela Dellinger at 25. I never screamed at Complainant. I did speak quite firmly to her after I learned that she had confronted a witness in the witnesses’ driveway after dark, thereby frightening the witness. A transcript of that December 31, 2018 telephone conference is in the file.

During a lengthy telephone conference on October 25, 2018 (before depositions had been scheduled), I discussed with Complainant the elements of a viable SOX claim. I summarized those elements in an Order I issued on October 29, 2018. That Order essentially provided Complainant with a road map for how to prove a SOX case.

Rule 2.2 of the American Bar Association's Model Rules of Judicial Conduct⁴ requires that a judge "perform all duties of judicial office fairly and impartially." I have attempted to adhere to the letter and spirit of that Rule when presiding over this case. Comment [4] to Rule 2.2 allows a judge to "make reasonable accommodations to ensure pro se litigants [have] the opportunity to have their matters fairly heard." Balanced against any "reasonable accommodation" provided to Complainant is my obligation to not allow any such "reasonable accommodation" to substantively prejudice the rights of Respondents, or to unduly interfere with the schedule established for the orderly disposition of this case. At every stage of these proceedings, I have attempted to provide neutral information to Complainant that might allow her to advance her claims, while not providing legal advice to her. I have made "reasonable accommodations" such as liberally granting extensions of time to Complainant so she might be able to obtain evidence to support her claims and to fully respond to motions filed by Respondents. I feel I have given Complainant every reasonable opportunity to have this complex matter fairly heard.

Respondents filed a Joint Motion to Dismiss on October 11, 2018. In their Motion, Respondents argued that Complainant was not providing discovery materials in a timely fashion. I conducted a telephone conference with the parties to address the discovery issues, and I assisted the parties in scheduling depositions and other discovery. I denied the Motion to Dismiss on October 23, 2018. The next day I issued an Order confirming the revised discovery schedule that I had already discussed with the parties.

During the telephone conference of October 25, 2018, Complainant identified 3 persons who might be witnesses to Complainant's alleged participation in activity protected by SOX. I explained to Complainant the process for obtaining testimony from those potential witnesses. Complainant asked me to issue subpoenas to these witnesses. I noted that one of the witnesses did not reside in the United States. On November 6, 2018, I issued an Order telling Complainant that I did not have the authority to compel a witness residing outside the United States to appear for a deposition. I issued the other 2 subpoenas requested by Complainant, and Complainant was able to take the depositions of these witnesses.

On December 14, 2018, Complainant filed a Motion to join Coupa, Inc. as a Respondent. I allowed Coupa, Inc. time to oppose the Motion for Joinder. After briefing of the issue, I denied Complainant's Motion to Join Coupa, Inc. as a new party Respondent.

Separate Motions for Summary Decision were filed by each of the Respondents on December 14, 2018. After I gave Complainant an extension of time, she filed a Brief in Opposition to Respondents' Motions on January 15, 2019.

⁴ These Rules are not binding on me, but I am familiar with the Rules and attempt to abide by them where appropriate.

The formal hearing is scheduled to begin on February 25, 2019 in Cleveland, Ohio.

Statement of Facts⁵

Complainant began working for Respondent Collabera on January 8, 2017. Her job title was “Loan Documentation Specialist.” Her workplace was at a facility operated by Respondent KeyBank in a suburb of Cleveland. KeyBank had acquired certain assets from another bank, and Complainant’s job was to verify signatures on various instruments securing the assets acquired by KeyBank. Complainant does not claim to have ever performed tasks related to the offering or provision of a consumer financial product or service, and she is thus not an employee covered by the whistleblower protection provisions of CFPA.⁶ From the outset, the parties and the Court have treated this matter as one arising only under the whistleblower protection provisions of SOX.

In her April 20, 2018 *Request for Appeal, and Submission of Objections* filed with the Office of Administrative Law Judges, Complainant suggests that during her employment at KeyBank she became aware of conduct which may have affected the value of assets acquired by KeyBank, or which otherwise constituted improper corporate governance:

It is my contention that Key, and associated persons and entities, by and through the its actions under the Federal Reserve Bank’s Borrower-In-Custody Program, (*Project*), dishonored multiple bank and broker-dealer-agent operating policies and procedures as distinguished in the capacities of Custodian, Agent, and Fiduciary. This was implemented and enforced by and through Key, as well as its’ vendors, through powerful and intimidating employer practices commonly referred to as ‘*corporate codes of employee silencing.*’

In so doing, Key failed *critical* internal and external operational risk, accounting, audit and workforce standards expectant of a public company. In so doing, it is reasonable to conclude that by their strategic goals and financial objectives of the merger they obligated themselves to multiple errors in judgement and misconduct unbecoming to Corporate Governing.⁷

On March 14, 2017 (approximately 2 months after beginning her job at KeyBank), Complainant was involved in a conversation in her workplace during which a co-worker (Karen) was heard making a threat against another co-worker (Leslie). Two days later, Complainant was involved in another workplace conversation with Karen in which threats were again made. Later that day, Complainant reported the threats of workplace violence to her supervisor (Angie).

⁵ This skeleton of this Statement of Facts is based largely on a timeline of events prepared by Complainant and supplied by her to OSHA on October 31, 2017.

⁶ See 12 U.S.C. § 5567(b). The phrase “Consumer Financial Product or Service” is defined by CFPA, 12 U.S.C. § 5481(5).

⁷ *Complainant’s Request for Appeal, and Submission of Objections* at 3. Emphasis in original.

After the workday had ended, Complainant received a telephone call from Collabera Human Resources informing Complainant that she was being terminated from her employment.

Procedural History

Following her termination on March 16, 2017, Complainant filed a timely complaint with OSHA. OSHA dismissed the Complaint, and Complainant then submitted objections and asked the Office of Administrative Law Judges to schedule the matter for hearing.

Summary Decision Standard

The standard for adjudicating summary decision motions brought pursuant to 29 C.F.R. §18.72⁸ is analogous to the adjudication of summary judgment motions brought under Rule 56 of the Federal Rules of Civil Procedure. *Mara v. Semptra Energy Trading, LLC*, ARB No. 10-051, slip op. at 5 (ARB June 28, 2011); *Frederickson v. The Home Depot U.S.A., Inc.*, ARB No. 07-100, slip op. at 5 (ARB May 27, 2010). The primary purpose of summary judgment is to isolate and promptly dispose of unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317 at 323-24 (1986). Under 29 C.F.R. §18.72(a), an administrative law judge may enter summary decision for either party “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.” “A genuine issue of material fact is one, the resolution of which could establish an element of a claim or defense and, therefore, affect the outcome of the litigation.” *Celotex* at 323-24. No genuine issue of material fact exists when the “record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary decision has the burden of establishing the “absence of evidence to support the nonmoving party’s case.” *Celotex* at 325. The burden then shifts to the nonmoving party, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). In reviewing a motion for summary decision, I must view all of the evidence in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587; *Allen v. Highlands Hosp. Corp.*, 545 F.3d 387, 393 (6th Cir. 2008).

Legal Background

Congress enacted SOX on July 30, 2002, as part of a comprehensive effort to combat corporate fraud. *Sylvester v. Parexel Int’l, LLC*, ARB No. 07-123, slip op. at 8 (ARB May 25, 2011). The United States Supreme Court has said that SOX was enacted “to safeguard investors in public companies and restore trust in the financial markets following the collapse of Enron Corporation.” *Lawson v. FMR LLC*, 571 U.S. 429 (2014). Included in the Act were whistleblower protection provisions, which were intended to respond to a “culture, supported by law, that discourage[d] employees from reporting fraudulent behavior not only to the proper authorities . . . but even internally.” S. Rep. No. 107-146, at 5 (2002). Section 806 of SOX

⁸ On May 19, 2015, the Department of Labor published final Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges (“Rules of Practice and Procedure”). 80 Fed. Reg. 28767 (May 19, 2015). The Rules of Practice and Procedure are published in Title 29, Part 18, of the Code of Federal Regulations (“C.F.R”).

extends these whistleblower protections to “employees of publicly traded companies.” 18 U.S.C. §1514A(a); 29 C.F.R. §1980. It prohibits covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information or otherwise assist their supervisors, Congress, or a federal agency in an investigation regarding conduct that the employee reasonably believes is a violation of 18 U.S.C. §§1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), 1348 (securities fraud), any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law related to fraud against shareholders. 18 U.S.C. §1514A; 29 C.F.R. §1980.100.

CFPA was enacted in 2010 as a response to the economic downturn then occurring. The purpose of the legislation is “To promote the financial stability of the United States by improving accountability and transparency in the financial system . . . [and] to protect consumers from abusive financial services practices” The Consumer Financial Protection Bureau was created as part of CFPA. The Bureau’s purpose is to enforce “Federal consumer financial law” for the purpose of ensuring access for consumers to markets for “consumer financial products and services,” and ensuring that the markets are fair, transparent and competitive. A consumer financial product or service includes extending credit and servicing loans and providing real estate settlement services. “Federal consumer financial law” includes the provisions of Title X of the Dodd-Frank Act and the “enumerated consumer laws.”

The Respondents

In order to be liable under SOX, an entity must have issued “a class of securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. 78l) or [be] a[ny] company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company.”⁹

None of the Respondents named by Complainant are publicly-traded companies. I take official notice¹⁰ of the content of the latest Form 10-K¹¹ filed by KeyCorp with the Securities and Exchange Commission.¹² It appears that KeyBank (the entity named by Complainant) is a “subsidiary or affiliate whose financial information is included in the consolidated financial statements of” KeyCorp.”¹³

The Supreme Court has addressed the potential SOX liability of contractors and subcontractors of publicly traded companies. The Supreme Court held that employees of those working for contractors and subcontractors of publicly-traded entities are protected by the SOX

⁹ 29 C.F.R. § 1980.101(d).

¹⁰ See 29 C.F.R. § 18.201(b)(2).

¹¹ [The most recent 10-K available through the Securities and Exchange Commission’s EDGAR portal is for KeyCorp’s fiscal year ending December 31, 2017, which is the year in which the events of this case occurred.](#)

¹² <https://www.sec.gov/Archives/edgar/data/91576/000009157618000011/key-123117x10k.htm#sA2D913F74E855D86959678C2BE17C6CE>. Last viewed February 13, 2019.

¹³ KeyBank National Association does not argue in the Motion for Summary Decision it filed on December 14, 2018 that it is not liable under SOX for the claims asserted by Complainant. I do not make a finding that KeyBank National Association is, in fact, an entity liable under SOX. However, for purposes of this decision, I assume KeyBank National Association would have SOX liability for the claims of Complainant.

anti-retaliation provisions.¹⁴ 29 C.F.R. § 1980.101(f) likewise stipulates that contractors and subcontractors of publicly-traded corporations may have liability under SOX.

The stock of KeyCorp. is traded on the New York Stock Exchange under the ticker symbol “KEY.” For purposes of this decision, I assume (but I do not find) that KeyCorp is a “company” within the meaning of SOX, 18 U.S.C. §1514A and 29 C.F.R. §1980.101(d). As an individual who may have formerly worked for a contractor or subcontractor of a subsidiary of KeyCorp, I assume for purposes of this decision (but I do not find) that Complainant is a covered employee under SOX. 29 C.F.R. §1980.101(g). For purposes of this decision, I thus assume (but do not find) that Complainant may bring and maintain this SOX action against each of the Respondents.

A SOX whistleblower claim applies the same burden of proof that is found in many Department of Labor whistleblower schemes, and which is commonly referred to as the “AIR-21” standard.¹⁵ Application of this burden of proof was exhaustively discussed in the *en banc* decision of the Administrative Review Board in *Palmer v. Canadian National Railway*, ARB No. 16-035, ALJ No. 2014-FRS-154 (ARB September 30, 2016). Under SOX, as interpreted by *Palmer*, Complainant must first prove by a preponderance of the evidence that: (1) she engaged in protected activity under the Act, (2) Employer knew or suspected that Complainant had engaged in the protected activity, (3) Complainant suffered an adverse personnel action, and (4) the protected activity was a contributing factor in the adverse personnel taken action against Complainant. At this summary decision stage, the failure of Complainant to come forward with evidence as to each of these elements is fatal to her case. If Complainant comes forward with evidence demonstrating these elements, the burden would then shift to Employer to prove by clear and convincing evidence that it would have taken the same adverse action even if Complainant had not engaged in the protected activity.

Complainant’s Protected Activity

Under 18 U.S.C. §1514A(a)(1), protected activity is defined as:

any lawful act done by the employee – (1) to provide information . . . regarding any conduct which the employee reasonably believes constitutes a violation of [18 U.S.C. §§] 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any

¹⁴ *Lawson v. FMR LLC*, 571 U.S. at 433. Neither DCR nor Collabera argue in their respective Summary Decision motions that they are not contractors or subcontractors whose employees are covered by the anti-retaliation provisions of SOX. I make no finding that DCR or Collabera are, in fact, entities that would have liability to Complainant under SOX. However, for purposes of this decision, I assume DCR and Collabera would each have SOX liability for Complainant’s claims.

¹⁵ The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Act (“AIR-21”) was enacted in 2000. AIR-21 contains a whistleblower protection provision found at 49 U.S.C. § 42121. The whistleblower protection standard codified in AIR-21 has subsequently been incorporated into many other federal whistleblower statutes, including SOX. *See generally*, *Palmer v. Canadian National Railway*, ARB No. 16-035, ALJ No. 2014-FRS-154 (ARB September 30, 2016), slip op. at page 39, footnote 166 (SOX contains burden of proof scheme incorporated from AIR-21).

provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to . . . a person with supervisory authority over the employee. . . .¹⁶

“Sarbanes-Oxley prohibits a publicly traded company from discharging an employee in retaliation for providing information to a supervisor . . . about ‘any conduct which the employee reasonably believes constitutes a violation’” of the types listed in Section 806 of SOX. *Beacom v. Oracle America*, 825 F.3d 376, 379 (8th Cir. 2015). SOX “requires the employee to hold a reasonable belief that the employer’s conduct amounts to fraud against shareholders, and the employee’s belief must be objectively reasonable.” *Beacom* at 380; *Sylvester v. Parexel Int’l LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-039 and -042, (ARB May 25, 2011) (*en banc*) slip op. at 14. A whistleblower’s report based upon a reasonable, but mistaken, belief that a company’s conduct constitutes a violation of the applicable law can constitute protected activity. *Van Asdale v. Int’l Game Tech.*, 557 F.3d 989, 1002 (9th Cir. 2009); *Sylvester* at 16.

Given the serious-sounding allegations suggested by her *Request for Appeal, and Submission of Objections*, I provided Complainant with every fair opportunity to develop evidence that would support the allegations of corporate malfeasance she seemed to be making at the outset of this litigation. In a timely fashion, I fairly advised Complainant of her obligation to present evidence of such alleged corporate malfeasance to me at this summary decision stage in order to avoid dismissal of her claims.

Complainant’s *Response to Motion for Summary Disposition* (filed January 15, 2019) is extremely difficult to follow and understand. I am aware that Complainant is not represented by counsel, and I have repeatedly re-read Complainant’s *Response to Motion for Summary Disposition* in an attempt to identify any account of any acts taken by Complainant that may constitute SOX protected activity. Complainant’s brief contains no argument or factual narrative that she was terminated from her employment (in whole or in part) because she complained to a supervisor about wire fraud, mail fraud, bank fraud, securities fraud or any other corporate malfeasance.

It does not appear Complainant developed any evidence of corporate malfeasance on the part of any Respondent. Complainant certainly did not present any evidence of such malfeasance to me at this summary judgment stage. I find that Complainant failed to develop or present evidence that any Respondent violated any accounting, audit or workforce standard applicable to a publicly-traded company. I find that Complainant failed to establish or present evidence that any Respondent had a policy of “corporate silencing.”

Nothing submitted by Complainant in this case demonstrates (or even alleges) that any of the Respondents actually committed wire fraud, mail fraud, bank fraud, securities fraud, or that Respondents actually violated any other law or regulation designed to protect KeyCorp’s shareholders. There is no proof (or even an allegation) that any action taken by any of the Respondents actually affected the price of KeyCorp stock. There is no evidence (or even an

¹⁶ A claimant would also engage in protected activity by reporting corporate malfeasance to a law enforcement agency or to a federal regulatory authority (18 U.S.C. § 1514A(a)(1)(A)), or to a Member of Congress or committee of Congress (18 U.S.C. § 1514A(a)(1)(B)).

assertion) that the actions of Respondents misled the investing public about the soundness of KeyCorp as an institution, or about the desirability of acquiring or holding KeyCorp stock. There is no proof (or even an allegation) that Complainant had a good faith belief that any Respondent had committed wire fraud, mail fraud, bank fraud, securities fraud or any law or regulation designed to protect shareholders or the investing public. There is no proof (or even an allegation) that Complainant reported misconduct covered by SOX to any person at any time.

Complainant appears to understand the requirement that, at this summary decision stage, she come forward with evidence that she engaged in the type of activity protected by SOX.¹⁷ Page 2 of her “*Response to Motion for Summary Disposition*” contains a summary of 18 U.S.C. §1514A(a)(1), and evidences her understanding that “protected activity [includes] the provision of information regarding conduct the employee ‘reasonably believes constitutes’ a violation of: (1) 18 U.S.C. §§ 1341, 1343, 1344, or 1348.”¹⁸

Despite her apparent understanding of the need to come forward with evidence of her protected activity, Complainant cites to no affidavit, deposition testimony, document, discovery response or other material which might demonstrate that she ever provided any information to anyone about the type of fraudulent activities enumerated in the whistleblower protection provisions of SOX. I have carefully read all of the depositions taken in this case, and reviewed every exhibit offered by the parties in their respective Summary Decision papers. Nowhere does Complainant state or suggest that she made a complaint to her supervisors (or to Congress or to a federal law enforcement agency) of wire fraud, mail fraud, bank fraud, securities fraud or any other type of misconduct which could have any type of effect of the value of the stock of KeyCorp, or that she reported any act by any person that could mislead investors about the soundness of KeyCorp stock. Complainant’s complaints made to OSHA, the U.S. Equal Employment Opportunity Commission and the Ohio Department of Jobs and Family Services in the wake of her discharge make no claim that Complainant reported any type of corporate fraud to anyone. Complainant’s Interrogatory answers contain no information about any type of complaint of corporate wrongdoing made by Complainant to anyone. Complainant did not submit an affidavit or declaration in support of her brief in opposition to summary decision.

At this summary decision stage, Complainant bears the burden to come forward with some evidence that her supervisors were actually aware, or had reason to suspect, that Complainant had made a report of corporate malfeasance to a supervisor, to Congress or to a federal law enforcement agency. Nothing in the record now before me satisfies Complainant’s burden to produce such evidence. I find no evidence in the record before me that Complainant’s supervisors had any reason to believe that Complainant had raised questions about fraudulent activities. There is no evidence that the person(s) involved in the decision to terminate Complainant’s employment had any reason to believe that Complainant has blown the whistle on corporate wrongdoing.

¹⁷ OSHA dismissed Complainant’s complaints because OSHA found no evidence that Complainant had engaged in protected activity. OSHA’s dismissal should have clearly communicated to Complainant that she needed to develop and produce evidence that she had participated in activity protected by SOX or CFPA.

¹⁸ Complainant’s *Response to Motion for Summary Disposition* at 2.

I find that Complainant has failed to come forward with any evidence that she engaged in any activity protected by SOX. Proof that she engaged in the type of activity protected by SOX is an essential element of Complainant's cause of action. I further find that Complainant has failed to come forward with any evidence that her supervisors had any knowledge that Complainant has participated in activity protected by SOX. Proof of such knowledge by her supervisors is an essential element of Complainant's SOX case.

During her brief employment with Respondents, Complainant was involved in verifying assets acquired by KeyCorp from another bank. During the term of her employment with Respondents, there is no evidence that Complainant was involved in any way in offering or managing consumer financial services. I find that Complainant has failed to produce any evidence that she is a person covered by CFPA. There is no evidence that Complainant ever reported to any other person or entity any improper conduct related to consumer financial services. Complainant has failed to come forward with any evidence that a violation of the whistleblower protection provisions of CFPA have occurred.

Conclusion

I believe Complainant was provided with sufficient information notifying her of the elements of a SOX claim. I believe Complainant was appropriately notified of her obligation to come forward with evidence at the summary decision stage to show the existence of a viable cause of action. I believe Complainant was afforded numerous opportunities to ask questions about what would be expected from her at the summary decision stage. I extended the discovery deadlines in this case to afford Complainant a fair opportunity to develop the type of evidence which may tend to support her claims. I issued subpoenas requested by Complainant so that she could compel the attendance of witnesses for depositions. I extended the deadline for Complainant to file her opposition to Respondents' respective motions for summary decision. Despite the fact that she has not been represented by counsel at any stage of this case, I believe Complainant has been given a fair opportunity to develop and present evidence of her protected activity.

At this summary decision stage, Complainant has produced no evidence showing that she engaged in activity protected under SOX. This is an essential element of her claim. Given the failure of proof of protected activity, I will not here consider whether Complainant suffered an adverse employment action, or whether engaging in protected activity was a contributing factor in the adverse employment action. Complainant's SOX claims are **DISMISSED**.

Complainant has produced no evidence that she had any involvement in providing consumer financial services. Such evidence is an essential element of a CFPA claim. There is no evidence that Complainant engaged in the type of activity protected by CFPA. Such evidence is required for her CFPA claim to proceed past this summary decision stage. Complainant's CFPA claims are **DISMISSED**.

Respondent Key Bank's Motion for Summary Decision is **GRANTED**. Respondent DCR's Motion for Summary Decision is **GRANTED**. Respondent Collabera's Motion for Summary Decision is **GRANTED**. The within action is hereby **DISMISSED**. The hearing scheduled for February 25, 2019 is **CANCELLED**.

Steven D. Bell
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).