



**Issue Date: 04 November 2020**

**CASE NO.: 2020-SOX-00010**  
**OSHA NO.: 3-0050-17-011**

*In the Matter of:*

**MICHAEL RYAN**  
*Complainant*

v.

**LAUREATE EDUCATION, INC.**  
*Respondent*

**ORDER GRANTING IN PART RESPONDENT’S MOTION FOR RECONSIDERATION**

This matter arises from a claim pursuant to Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, as amended, 18 U.S.C. § 1514A (“SOX”), and the implementing regulations at 29 C.F.R. Part 1980. In accordance with 29 C.F.R. § 1980.107(a), all proceedings must be conducted in a manner consistent with the Rules of Practice and Procedure set forth at 29 C.F.R. Part 18.

On March 2, 2020, the Respondent filed a Motion to Dismiss Both of Mr. Ryan’s Complaints or in the Alternative, Motion to Limit Issues for Hearing. The Respondent argued that the Complainant’s complaint failed to satisfy the requirements for whistleblower protections under both the Dodd Frank Act and SOX. On September 15, 2020, I issued an Order Denying Respondent’s Motion to Dismiss noting that genuine issues of material facts still remained.

On October 21, 2020, the Respondent filed a Motion for Reconsideration of Motion to Dismiss or Summary Judgment Limited to the Issue of Complainant’s Termination of Employment (“Motion”). In addition to other arguments, the Respondent argues that the Complainant was not a covered whistleblower under Dodd-Frank at the time of his employment termination because he had not reported any alleged violations to the Security and Exchange Commission (“SEC”) prior to his termination.

The term “whistleblower” means any individual who provides... information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission. 15 U.S.C. § 78u-6(a)(6). The Supreme Court has held that an employee who did not report any securities laws violations to SEC did not qualify as a whistleblower. *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767. The Court noted that because Respondent

*Somer* did not provide information to [SEC] before his termination, he did not qualify as a whistleblower at the time of the alleged retaliation, and therefore was ineligible to seek relief under Section 78u-6(h). *Somers*, 138 S. Ct. at 778. Uncontroverted evidence shows that the Complainant was terminated from his position with Laureate Education on May 20, 2016. He subsequently filed a complaint with the SEC on September 2, 2016.

As already established by the Supreme Court, because the Complainant did not file his complaint with the SEC prior to his termination, he does not enjoy the protections established under Section 78u-6(h) of the Dodd-Frank Act. Accordingly, this Court lacks jurisdiction due to the Complainant's failure to report any alleged violations to SEC prior to the termination of his employment with Respondent.

Upon consideration, Respondent's Motion is hereby **GRANTED IN PART**, and the Complainant's claim seeking whistleblower protection under the provisions of the Dodd-Frank Act is **DISMISSED**.

**SO ORDERED.**

**FRANCINE L. APPLEWHITE**  
Administrative Law Judge  
Washington, D.C.

**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](mailto: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. § 1980.110(a). Your Petition should identify the legal 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. § 1980.110(a).

When 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 on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(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. §§ 1980.109(e) and 1980.110(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. § 1980.110(b).