

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80595-CIV-HURLEY/LYNCH

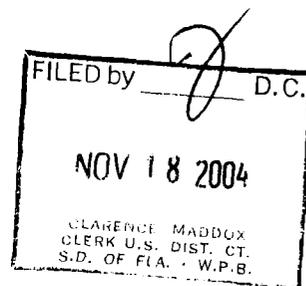
ROBERT HANNA,

Plaintiff,

v.

WCI COMMUNITIES, INC., et al.

Defendants.



---

**ORDER GRANTING MOTION TO DISMISS  
OF DEFENDANT HILLIARD M. EURE, III**

**THIS CAUSE** comes before the court upon a motion by defendant Hilliard M. Eure, III to dismiss this case for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Mr. Eure contends that plaintiff Robert Hanna's Sarbanes-Oxley Act whistle-blower protection complaint against him is barred for failure to exhaust the administrative remedies set forth in 18 U.S.C. § 1514A and 49 U.S.C. § 42121(b). Because the plain language of 18 U.S.C. § 1514A(b)(1) states that a plaintiff seeking relief under the Sarbanes-Oxley Act may not file an action in district court unless they had already filed an administrative complaint with the Secretary of Labor, the court dismisses Mr. Hanna's complaint against Mr. Eure.

**BACKGROUND**

On December 12, 2003, pursuant to the procedural provisions of the Sarbanes-Oxley Act, Mr. Hanna filed an administrative enforcement action with the Department of Labor ("DOL") against the following defendants: WCI Communities, Inc. ("WCI"), Alfred Hoffman, Jr., Jerry L. Starkey, Michael Greenberg, and Kerry Rudolph. See 18 U.S.C. § 1514A(b)(1)(A). Mr. Hanna's

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page.

administrative complaint against the named defendants refers to Mr. Eure's role in terminating him. However, Mr. Hanna did not include Mr. Eure as a named defendant in his administrative complaint with the DOL.

The issue presented in this motion to dismiss is whether Mr. Hanna's district court lawsuit against Mr. Eure is barred for failing to name Mr. Eure as a defendant in Mr. Hanna's administrative complaint.

### **JURISDICTION AND VENUE**

This court has federal question jurisdiction over Mr. Hanna's action pursuant to 28 U.S.C. § 1331 because his action is brought under 18 U.S.C. § 1514A (i.e. the "Sarbanes-Oxley Act"). This court has supplemental jurisdiction over Mr. Hanna's state law whistleblower claim pursuant to 28 U.S.C. § 1367(a).

Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Florida.

### **DISCUSSION**

#### **A. STANDARD OF REVIEW**

A motion to dismiss is appropriate only when it is demonstrated "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). For the purpose of a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and all facts alleged by the plaintiff are accepted as true. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); see also Wright v. Newsome, 795 F.2d 964, 967 (11th Cir. 1986) ("[W]e may not . . . [dismiss] unless it appears beyond doubt that the

plaintiff can prove no set of facts in support of the claims in the complaint that would entitle him or her to relief.”) (citation omitted). Furthermore, the threshold is “exceedingly low” for a complaint to survive a motion to dismiss for failure to state a claim. Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir. 1985). Regardless of the alleged facts, however, a court may dismiss a complaint on a dispositive issue of law. See Marshall County Bd. of Educ. v. Marshall County Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993).

Under established Eleventh Circuit precedent, a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment if the attached document is: (1) central to the plaintiff's claim; and (2) undisputed. Horsley v. Feldt, 304 F.3d 1125, 1134 (11th Cir. 2002). The court may also consider a document central to plaintiffs' complaint that the defense appends to its motion to dismiss if its contents are not in dispute. Harris v. Ivax Corp., 182 F.3d 799, 802 (11th Cir. 1999). “Undisputed” in this context means that the authenticity of the document is not challenged. Horsley, 304 F.3d at 1134.

## **B. DEFENDANTS' MOTION TO DISMISS**

### **1. Overview of the Procedure for Filing a Sarbanes-Oxley Act Civil Enforcement Action**

The Sarbanes-Oxley Act “provides that no company subject to the Securities Exchange Act of 1934 may retaliate against an employee who lawfully cooperates with an investigation concerning violations of the Act or fraud on the shareholders.” Carnero v. Boston Scientific Corp., No. 04-10031, 2004 U.S. Dist. LEXIS 17205 (D. Mass. Aug. 27, 2004). The Sarbanes-Oxley Act specifically mandates the following procedure for bringing a civil enforcement action:

b) Enforcement action.

(1) In general. A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by--

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an 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.

(2) Procedure.

(A) In general. An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

18 U.S.C. § 1514A. In other words, “[b]efore an employee can assert a cause of action in federal court under the Sarbanes-Oxley Act, the employee must file a complaint with the Occupational Safety and Health Administration (“OSHA”) and afford OSHA the opportunity to resolve the allegations administratively.” Willis v. VIE Financial Group, Inc., No. 04-435, 2004 U.S. Dist. LEXIS 15753 (E.D. PA. Aug. 6, 2004) (citing 18 U.S.C. § 1514A(b)(1)(A); 29 C.F.R. § 1980.103(e)). “The administrative complaint must be filed ‘within 90 days after an alleged violation of the Act occurs’ and include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.” Id. (citing 18 U.S.C. § 1514A(b)(2)(D); 29 C.F.R. § 1980.103(b, d)).

2. Mr. Eure’s Motion to Dismiss

Mr. Eure contends that Mr. Hanna’s Sarbanes-Oxley Act lawsuit against him is barred for failure to file an administrative complaint against him within 90 days after the date Mr. Eure allegedly violated the Act. See 29 C.F.R § 1980.103. Mr. Hanna concedes that “Eure was not named in the heading of the [administrative complaint] filed by Hanna” against the other defendants in this

case. Pl.'s Resp. to Defs' Mot. Dismiss at 2. Nonetheless, Mr. Hanna asserts that his claim should not be dismissed because Mr. Eure was "identified as an actor in Hanna's termination on page 5 of Hanna's initial administrative claim . . . [and, thus,] Eure was on notice as to the claims against him at the administrative level." Id. at 2-3.

Mr. Hanna's argument misunderstands the purpose of filing an administrative complaint under the Sarbanes-Oxley Act's procedural framework. As stated above, the Act requires an aggrieved employee to file an administrative complaint to "afford OSHA the opportunity to resolve the allegations administratively." Willis v. VIE Financial Group, Inc., No. 04-435, 2004 U.S. Dist. LEXIS 15753 (E.D. PA. Aug. 6, 2004) (citing 18 U.S.C. § 1514A(b)(1)(A); 29 C.F.R. § 1980.103(e)). Mr. Hanna's failure to name Mr. Eure in his administrative complaint failed to afford OSHA the opportunity to resolve Mr. Hanna's allegations through the administrative process. Even if the court assumed that Mr. Eure was placed on notice that he had allegedly violated the law, that notice has no consequence as to whether OSHA was placed on notice that it was required to investigate Mr. Eure's actions in this case.

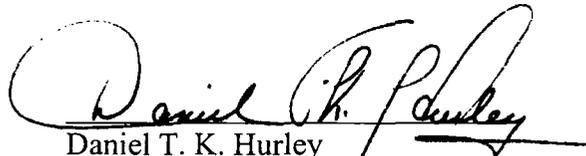
Mr. Hanna's failure to name Mr. Eure in an OSHA administrative complaint within 90 days of Mr. Eure's alleged violation of the Sarbanes-Oxley Act requires this court to dismiss Mr. Eure as a defendant in this case. The plain language of the Sarbanes-Oxley Act is clear that a plaintiff may only sue a defendant under this Act in federal court "if the Secretary has not issued a final decision within 180 days of the filing of the [administrative] complaint." 18 U.S.C. § 1514A(b)(1)(B). Since Mr. Hanna failed to file an administrative complaint against Mr. Eure, he never afforded the DOL the opportunity to issue a final decision within 180 days of filing his administrative complaint. Therefore, the court dismisses Mr. Hanna's Sarbanes-Oxley Act claim against Mr. Eure.

Order Granting Motion to Dismiss  
Hanna v. WCI Communities, Inc., et al.  
Case No: 04-80595-CIV-HURLEY/LYNCH

Furthermore, since the only remaining claim against Mr. Eure is a state law whistleblower claim, the court declines to exercise supplemental jurisdiction over Mr. Hanna's state law claim. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966). Therefore, the entirety of Mr. Hanna's claims against Mr. Eure are dismissed.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Mr. Eure's' motion to dismiss [DE # 19-1] is **GRANTED**. This case is **DISMISSED** in its entirety as to defendant Hilliard M. Eure, III.

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida this 15<sup>H</sup> day of November, 2004.

  
Daniel T. K. Hurley  
United States District Judge

*Copies provided to counsel of record*