UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Cherry Hill, New Jersey

Issue Date: 18 June 2024

Case No.: 2023-CAR-00003

In the Matter of

Darryl Webb,
Complainant,

v.

Sinai Chicago Hospital and Solve IT Strategies, Inc.,
Respondents

ORDER GRANTING THE MOTION TO DISMISS

This case arises under the employee-protection provisions of the Criminal Antitrust Anti-Retaliation Act ("CAARA"), 15 U.S.C § 7a-3 (CAR). The implementing regulations found in the Code of Federal Regulations at 29 C.F.R. Part 1991 govern this action. Pursuant to 29 C.F.R. § 1991.107, the matter will proceed in a manner consistent with the procedural rules set forth in the federal regulations at 29 C.F.R. Part 18, Subpart A (29 C.F.R. §§ 18.10 to 18.95). Complainant is self-represented in this matter.

I. Procedural Background

On March 5, 2024, Respondent Sinai Health System ("Sinai") filed a Motion to Dismiss for Failure to State a Claim ("Motion"). In the Motion, Respondent argues that the Criminal Antitrust Anti-Retaliation Act ("CAARA") only protects individuals who report antitrust violations and then suffer retaliation. Sinai alleges that Complainant Darryl Webb ("Complainant") never engaged in protected activity under CAARA as he never reported an antitrust violation and is thus not afforded protection under CAARA. Specifically, Sinai argues that Complainant's allegations turn on how he reported that one of Sinai's vendors, Renovo Solutions ("Renovo"), allegedly overbilled Sinai for its services. However, Sinai holds that Renovo's unilateral act in allegedly overbilling Sinai does not constitute a violation of Section 1, which requires that separate entities work in concert to unreasonably restrain trade in interstate commerce. Accordingly, Complainant reporting Renovo's unilateral billing practices as problematic cannot possibly support his claim under CAARA. Further, Sinai explained that Section 3 of the Sherman Act also does not apply. Section 3 concerns unreasonable restraints on trade

involving a United States territory, the District of Columbia ("D.C."), or foreign nations. Complainant alleges nothing in the Complaint relating to any of the foregoing. Therefore, Sinai argues that Complainant never engaged in protected activity and is, thus, not protected under CAARA.

Complainant never responded to Respondent's *Motion to Dismiss* but filed his own *Motion for Summary Judgement*, which the undersigned understands to be his response to *the Motion to Dismiss* and counter motion for relief. In his *Motion for Summary Judgement*, Complainant broke down his requested relief as in excess of $1,382,883.00 for Compensatory, Moral/Emotional Stress, and Treble Damages, which he alleges are proven and qualified losses, attributable to Sinai's actions. Complainant offered no other legal arguments in support of his motion.

II. LEGAL STANDARD

When deciding a motion to dismiss a complaint for failure to state a claim, pursuant to 29 C.F.R. § 18.70(c), the administrative law judge may refer to cases adjudicating Federal Rule of Civil Procedure ("FRCP") 12(b)(6) motions as general guidance. See 29 C.F.R. § 18.10. Federal Rule of Civil Procedure 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). However, to maintain a fraud claim, "a party must state with particularity the circumstances constituting the fraud." Fed. R. Civ. P. 9(b). To satisfy the pleading standards under Rule 9(b), plaintiffs typically must aver the "who, what, when, where, and how." *U.S. ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 853 (7th Cir. 2009).[1]

To survive a motion to dismiss for failure to state a claim, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim becomes facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). When ruling on a motion to dismiss, we must construe "all well-pleaded allegations of the complaint as true and view them in the light most favorable to the plaintiff." *Zimmerman v. Tribble*, 226 F.3d 568, 571 (7th Cir. 2000).

In the Seventh Circuit, when evaluating a motion to dismiss for failure to state a claim, district courts are limited to reviewing the factual allegations contained in the pleadings, which includes "documents attached to or referenced in the pleading if they are central to the claim." *Citadel Grp. Ltd. v. Washington Reg'l Med. Ctr.*, 692 F.3d 580, 591 (7th Cir. 2012); *see also Thompson v. Illinois Dept. of Prof'l Regul.*, 300 F.3d 750,

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[1] Both Complainant and Respondent are in Chicago, Illinois, so the law of the U.S. Court of Appeals for the Seventh Circuit applies.

753 (7th Cir. 2002) (explaining that, on a Rule 12(b)(6) motion, courts are restricted to the complaint, any attached exhibits, and the supporting briefs). Indeed, "because Rule 12(b)(6) assesses the sufficiency of the complaint, it would be a legal error to consider an affidavit filed by a defendant that contradicts the complaint's allegations." *Barker v. Kapsch Trafficcom USA, Inc.*, No. 1:19-cv-00987-TWP-MJD, 2020 U.S. Dist. LEXIS 94857, 2020 WL 2832092, at 6 (S.D. Ind. June 1, 2020).

Complainant has alleged that Respondent violated his rights under CAARA. CAARA exists to provide relief for individuals who report antitrust violations and then suffer retaliation. 15 U.S.C. §§ 7a-3(a)-(d). For Complainant to show that he engaged in activity protected under CAARA, relevant here, he must establish that he reported an antitrust violation. 15 U.S.C. § 7a-3(a)(1)(A)(i). Complainant must further show the protected activity was a contributing factor in the unfavorable personnel decision. 15 U.S.C. § 7a-3(a). Importantly, Complainant only needs to have a reasonable belief that a potential antitrust violation has occurred. *Id.* This standard includes two components: a subjective component and an objective component. *See Rhinehimer v. U.S. Bancorp. Invs., Inc.,* 787 F.3d 797, 811 (6th Cir. 2015). The subjective component consists of an employee's reasonable belief that a violation of relevant law occurred. *Id.* at 808. The objective component requires evidence that would lead a reasonable person to believe a violation of relevant law occurred. *Id.* at 811.

A. Factual Allegations

In his OSHA Complaint, Complainant alleges nothing about Sinai violating antitrust laws. Instead, he alleges that starting in 2020, Renovo Solutions ("Renovo"), Sinai's IT supply vendor, overbilled Sinai, and Renovo's billing practices constitute an antitrust violation. He suspects that the overbilling amounted to between one to five million dollars. Complainant alleges that, upon discovering this, he raised his concerns with his director, Ken Slawkowski. His director ignored his concerns, so he emailed Respondent's CEO, CCO, and CFO on September 6, 2020, detailing his concerns. In response, they informed him that they sent his complaint to Sinai's Compliance Department for investigation. Complainant believes that the internal Compliance Department interviewed Ken Slawkowski and suspects they then closed his complaint with no action taken.

In response to his complaint about Renovo, Complainant alleges that Ken Slawkowski intentionally engaged in retaliatory conduct to get Complainant to resign. He alleges he suffered adverse actions including blocking him from being hired as a full-time employee (Complainant worked as a contractor), which resulted in a period of 2.7 years when he did not have health insurance, pay raises, or paid vacation days. Moreover, he claims Mr. Slawkowski failed to respond to him and to Solve IT Strategies regarding his performance appraisal. On February 15, 2022, Claimant had a conversation with his new Director, Adriana Guzman, who advocated for him to become a full-time employee, in which she shared that Mr. Slawkowski informed her that there

was a hiring freeze, and all IT Contractors' hours would be cut in half, effective immediately. Since one of Complainant's duties was to facilitate IT contractor labor invoices, he allegedly found out that he was the only contractor whose hours were reduced. Additionally, he claims he received information from a reliable source that employees were hired during the 'hiring freeze' and that Mr. Slawkowski's statement about a hiring freeze was false.

On February 24, 2022, Complainant sent another email to Respondent's CEO (Karen Teitelbaum) and COO (Airica Steed) updating them regarding fraud, waste and/or mismanagement, and the retaliatory conduct by the newly appointed Chief Information Technology Officer-Mr. Slawkowski. In response, he received a call, after work hours, from Sinai's Compliance Department manager, Rita Esparza, to discuss the complaint he sent the CEO and COO. According to Complainant, the call lasted for two hours, and she agreed that there was some form of mismanagement and that she would open an investigation.

B. Legal Analysis

To withstand Respondent's Motion to Dismiss, Complainant must allege enough facts that allow the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. In this case, Complainant did not state any facts detailing how Sinai violated antitrust laws. The undersigned agrees that Renovo's unilateral overbilling of Sinai does not constitute any misconduct on Sinai's behalf. While Complainant may have had a subjective belief of a potential antitrust violation, subjective belief alone is insufficient to establish that a violation has taken place. *See Sylvester v. Parexel Int'l LLC*, ARB No. 07-123, 2011 WL 2165854, at *11-12 (May 25, 2011) (stating that an employee's reasonable belief must include both a subjective belief and an objective belief that the complained-of conduct constitutes a violation of relevant law). Even though Complainant has presented his statement detailing how Mr. Slawkowski allegedly retaliated against him, that is not enough to be protected under CAARA. He does not present sufficient evidence concerning how Sinai violated antitrust laws. It seems his Complaint is mainly focused on the alleged retaliatory actions he suffered, and not on the other elements required under CAARA, specifically how Respondent allegedly violated antitrust laws. Even assuming his allegations of overbilling by Renovo are true, Complainant's allegations do not show a violation of Sections 1 and 3 of the Sherman Act-*i.e.*, the applicable antitrust laws, which make criminal any actions that unreasonably restrain interstate or foreign commerce. Complainant concedes he has never claimed that the alleged primary wrongdoer, Ken Slawkowski, an employee of Sinai, engaged in criminal activity. Thus, Complainant fails to show that Sinai engaged in criminal activity and CAARA only protects individuals who report criminal antitrust violations.

III. CONCLUSION

Therefore, looking at this matter in the light most favorable to Complainant, he has not alleged enough facts to prove a violation of CAARA. Consequently, the undersigned GRANTS Respondent's *Motion to Dismiss.*

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey-District Office

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within thirty (30) days of the date of the administrative law judge's decision. 29 C.F.R. § 1991.110(a).

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. § 1999.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1991.110(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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1991.110(a).

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. § 1991.110(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. §§ 1991.109(e) and 1991.110(a) and (b).

FILING AND SERVICE OF AN APPEAL

1. Use of EFS System: The Board's Electronic Filing and Service (EFS) system allows parties to initiate appeals electronically, file briefs and motions electronically, receive electronic service of Board issuances and documents filed by other parties, and check the status of appeals via an Internet-accessible interface. Use of the EFS system is free of charge to all users. To file an appeal using the EFS System go to https://efile.dol.gov. All filers are required to comply with the Board's rules of practice and procedure found in 29 C.F.R. Part 26, which can be accessed at https://www.ecfr.gov/current/title-29/subtitle-A/part-26.

A. Attorneys and Lay Representatives: Use of the EFS system is **mandatory for all attorneys and lay representatives** for all filings and all service related to cases filed with the Board, absent an exemption granted in advance for good cause shown. 29 C.F.R. § 26.3(a)(1), (2).

B. Self-Represented Parties: Use of the EFS system is strongly encouraged for all self-represented parties with respect to all filings with the Board and service upon all other parties. Using the EFS system provides the benefit of built-in service

on all other parties to the case. Without the use of EFS, a party is required to not only file its documents with the Board but also to serve copies of all filings on every other party. Using the EFS system saves litigants the time and expense of the required service step in the process, as the system completes all required service automatically. Upon a party's proper use of the EFS system, no duplicate paper or fax filings are required.

Self-represented parties who choose not to use the EFS system must file by mail or by personal or commercial delivery all pleadings, including briefs, appendices, motions, and other supporting documentation, directed to:

Administrative Review Board
Clerk of the Appellate Boards
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220
Washington, D.C., 20210

2. EFS Registration and Duty to Designate E-mail Address for Service

To use the Board's EFS system, a party must have a validated user account. To create a validated EFS user account, a party must register and designate a valid e-mail address by going to https://efile.dol.gov, select the button to "Create Account," and proceed through the registration process. If the party already has an account, they may simply use the option to "Sign In."

Once a valid EFS account and profile has been created, the party may file a petition for review through the EFS system by selecting "eFile & eService with the Administrative Review Board" from the main dashboard, and selecting the button "File a New Appeal - ARB." In order for any other party (other than the EFS user who filed the appeal) to access the appeal, the party must submit an access request. To submit an access request, parties must log into the EFSSystem, select "eFile & eService with the Administrative Review Board," select the button "Request Access to Appeals," search for and select the appeal the party is requesting access to, answer the questions as prompted, and click the button "Submit to DOL."

Additional information regarding registration for access to and use of the EFS system, including for parties responding to a filed appeal, as well as step-by-step User Guides, answers to frequently asked questions (FAQs), video tutorials and contact information for login.gov and EFS support can be found under the "Support" tab at https://efile.dol.gov.

3. Effective Time of Filings

Any electronic filing transmitted to the Board through the EFS e-File system or via an authorized designated e-Mail address by 11:59:59 Eastern Time shall be deemed to be filed on the date of transmission.

4. Service of Filings

A. Service by Parties

Service on Registered EFS Users: Service upon registered EFS users is accomplished automatically by the EFS system.

Service on Other Parties or Participants: Service upon a party that is not a registered EFS user must be accomplished through any other method of service authorized under applicable rule or law.

B. Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail (unless otherwise required by law). If a party unrepresented by counsel files their appeal by regular mail, that party will be served with Board-issued documents by regular mail. Any party may opt into e-service at any time by registering for an EFS account as directed above, even if they initially filed their appeal by regular mail or delivery.

5. Proof of Service

Every party is required to prepare and file a certificate of service with all filings. The certificate of service must identify what was served, upon whom, and manner of service. Although electronic filing of any document through the EFS system will constitute service of that document on all EFS-registered parties, electronic filing of a certificate of service through the EFS system is still required. **Non EFS-registered parties must be served using other means authorized by law or rule.**

6. Inquiries and Correspondence

After an appeal is filed, all inquiries and correspondence related to filings should be directed to the Office of the Clerk of the Appellate Boards by telephone at 202-693-6300 or by fax at 202-513-6832. Other inquiries or questions may be directed to the Board at (202) 693-6200 or ARB-Correspondence@dol.gov.