



Issue Date: 14 April 2011

CASE NO.: 2007-SOX-00083

In the Matter of:

ASHWIN ABHYANKAR,
Complainant,

vs.

COUNTRYWIDE FINANCIAL CORP.,
Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

This matter arises out of a retaliation complaint filed by Ashwin Abhyankar (“Complainant”) who alleges that his former employer, Countrywide Financial Corporation (“Respondent”), violated 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. § 1514A, *et seq.*, (“Sarbanes-Oxley” or “SOX”), by terminating his employment in retaliation for making complaints to his superiors concerning accounting inconsistencies and preferential treatment of financial consultants. I issued an order on March 21, 2011, dismissing this complaint. The Complainant filed a Motion for Reconsideration on March 29, 2011, seeking reconsideration or modification on a number of grounds. This motion was served on Respondent on March 28, 2011. 29 C.F.R. § 18.4(c)(2). Respondent’s response to the motion was due April 12, 2011. 29 C.F.R. §§ 18.4(c), 18.6(b). My office did not receive a response to the motion as of April 13, 2011, thus the motion can be deemed unopposed.

I have reviewed the motion and the supporting documents and find no basis for modifying my decision to dismiss this complaint even though the motion is unopposed. Some of the arguments the Complainant presents in his motion for reconsideration are in actuality challenges to my original order requiring the Complainant to go to arbitration. That is an issue that should be brought before the Administrative Review Board (“ARB”)¹ and is not a proper issue to raise on reconsideration of my order dismissing his complaint.

The Complainant also argues that the Partial Final Award was not issued until February 10, 2011, and submits documentation to corroborate that. While the Partial Final Award was not issued until February 10, 2011, that does not change my conclusion that the Frank-Dodd Act

¹ I note that on April 11, 2011, the ARB issued a Notice of Appeal acknowledging a petition for review filed by the Complainant in this case.

should not be applied retroactively in this case. The arbitration, itself, had already taken place in this case before enactment of the Frank-Dodd Act.

I also am not persuaded by the Complainant's citation to Judge Rosenow's decision in *Lasiter v. Kellog Brown & Root*, 2011 WL 484743, 2010-SOX-00047, in which Judge Rosenow reviewed an arbitrator's decision before dismissing a SOX complaint. Judge Rosenow's decision is not binding on me. Moreover, the appropriate forum for reviewing an arbitrator's award is dependent on the terms of the contract that provided for arbitration. 9 U.S.C. § 9. The contract in Judge Rosenow's case may have been authorized a review by the Office of Administrative Law Judges. That is not the case here. As discussed in my original order, the proper forum for review of the arbitration decision in this case is the Federal district court.

The Complainant's motion for reconsideration is DENIED.

A

JENNIFER GEE
Administrative Law Judge

San Francisco, California