

**U.S. Department of Labor**

Office of Administrative Law Judges  
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Covington, LA 70433

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**Issue Date: 06 February 2007**

**CASE NO.: 2007-SOX-00010**

**IN THE MATTER OF**

**MICHAEL CIAVARRA,  
Complainant**

**v.**

**BMC SOFTWARE, INC. and  
BMC SOFTWARE DISTRIBUTION, INC.,  
Respondents**

**DECISION AND ORDER OF DISMISSAL AND  
ORDER CANCELLING HEARING**

The Complainant in this matter has decided to pursue his case in federal court; therefore, the pending proceeding before this office is **DISMISSED without prejudice**. Accordingly, the formal hearing scheduled for March 6, 2007, in Houston, Texas, is **CANCELLED**.

**So ORDERED** this 6<sup>th</sup> day of February, 2007, in Covington, Louisiana.

**A**

**C. RICHARD AVERY  
Administrative Law Judge**

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10)

business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(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. The Petition must also be served on 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.

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(c). Even if you do file a Petition, 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 after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).