

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 April 2010

CASE NO: 2007-SOX-84

In the Matter of:

ROBERT A. MOTHERSHEAD
Complainant

v.

DELPHI CORPORATION
Respondent

DECISION AND ORDER OF DISMISSAL

This matter is before me on Complainant, Robert Mothershead's, objections to the Secretary's findings that Complainant cannot establish a violation of § 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (hereafter SOX). Mothershead filed a complaint with Occupational Safety and Health Administration, U.S. Department of Labor on April 13, 2007 alleging that in 2002 he was working as a consultation contractor for Delphi Corporation hereinafter (Delphi). I have reviewed all filings by Mothershead and Delphi, including Mothershead's most recent filing on April 16, 2010. Mothershead alleges that Delphi terminated his consulting relationship and refused to pay his fees in retaliation of the allegations he made against Delphi for criminal misconduct and accounting fraud.

Delphi contended that Mothershead's complaint was untimely, that he released all claims, including the filing of the SOX complaint, and that he never engaged in protected activity.

The Secretary dismissed Mothershead's § 806 complaint because it was not filed within 90 days of the alleged discriminatory act as required by 18 U.S.C. § 1514A(b)(2)(D).

By letter of January 7, 2008, I was informed by counsel for Delphi that Delphi Corporation was in Chapter 11 Bankruptcy Protection, having filed its Chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York on October 8, 2005. Further, prior to filing his SOX complaint, Mothershead filed proof of claim 15630 in Delphi's Chapter 11 case. This proof of claim included the same allegations that Mothershead later alleged in support of the SOX Complaint. Further, on December 7, 2007, following a hearing in which Mothershead participated, U.S. Bankruptcy Judge Robert Drain issued an Order disallowing and expunging with prejudice Mothershead/Azimuth's¹ proof of claim, finding that

¹ Mothershead is proprietor, owner, and sole stockholder of Azimuth North America. See transcript of telephone conference call dated February 26, 2010 admitted as ALJX1.

the claim failed to state a claim as a matter of law. Delphi requested that the U.S. Bankruptcy code's automatic stay provisions on administrative proceedings against debtors in bankruptcy cases be put into effect because no exceptions to the automatic stay provisions applied.

By Order of January 24, 2008, I cancelled the hearings scheduled for February 5 – 7, 2008 in Detroit, Michigan, citing *Platone v. Flyi, Inc.*, ARB 04-154, ALJ No. 2003-SOX-27 (ARB Sept. 29, 2006) in support of my finding that the automatic stay provided by § 362 of the Bankruptcy Code was in effect. I further ordered that Delphi provide me written reports every six months describing the status of Delphi's Chapter 11 reorganization.

Finally, on February 3, 2010², counsel for Delphi notified me that Delphi Corporation emerged from Bankruptcy with a name change to DPH Holdings Corporation. In addition, Delphi stated that on July 31, 2006, Mothershead filed a proof of claim in the former debtors' Chapter 11 case asserting a contingent claim of \$284,487. The Bankruptcy court entered an Order disallowing and expunging this claim on December 7, 2007 because Mothershead had no valid claim to assert against the former debtor. (Bankruptcy Court Docket No. 11359). In addition, the Order stated that Mothershead's SOX claim ought to be dismissed with prejudice in light of the discharge and injunction provided by the Modification Approval Order and the Modified Plan.

On February 26, 2010, I conducted an on the record conference call with the parties. (ALJX1). Mothershead introduced himself as proprietor and sole member of Azimuth North America, which is the company that provided services to Delphi. (*Id.* at 4, 11). Mothershead, acting as his own counsel, agreed that he filed a claim on or about July 31, 2006 in the amount of \$284,487 before the Bankruptcy Court. (*Id.* at 5 & 6). Mothershead also agreed that the Bankruptcy Court entered an Order disallowing and expunging this claim on December 7, 2007. (*Id.* at 6; Bankruptcy Court Docket 11359). Mothershead further admitted that the matter discharged by the Bankruptcy Court had at its core many of the same issues as the SOX Whistleblower claim before me. Although the form, format, and ancillary issues that are required to be eligible as an OSHA claim were different, at the heart of the claim was the issue of what happened in the year 2002.

I'm satisfied that Delphi, in its letter of March 26, 2010, provided authority that in a case such as this, any continued prosecution by Mothershead would constitute a violation of the injunction provided in 11 U.S.C. § 524. I'm satisfied that any claims against Delphi and/or DPH Holdings Corporation have been discharged by virtue of the Modified Plan of Reorganization, the Modified Approval Order, and 11 U.S.C. §§ 1141, 524.

WHEREFORE, the above considered, the case of Robert A. Mothershead v. Delphi Corporation is hereby dismissed with prejudice.

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MICHAEL P. LESNIAK
Administrative Law Judge

² Delphi letter of February 3, 2010 with exhibits are admitted as ALJX2.

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, Suite S-5220, 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).