

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 30 August 2007**

Case No: 2007-SOX-00061

In the Matter of:

KEN L. MULLINS,  
Complainant

v.

FPL ENERGY, LLC and  
FPL GROUP, INC., *et al.*  
Respondents

**ORDER DISMISSING COMPLAINT WITH PREJUDICE**

Complainant, Ken L. Mullens, filed a complaint against Respondent, FPL Energy, under the whistleblower protection provisions of the Sarbanes-Oxley Act ("SOX"), 18 U.S.C. §1514A. Complainant originally filed his Complaint on February 9, 2007, with the Secretary of Labor who found it lacked merit. Complainant filed objections on June 22, 2007, and the claim was subsequently transferred to the Office of Administrative Law Judges. A hearing is set for December 10, 2007. On July 30, 2007 Complainant filed a Motion providing notice of his intent to file a claim in U.S. District Court and requesting a dismissal of his claim without prejudice. The Respondent has not responded to the motion.

Under 18 U.S.C.A. § 1514A(b)(1)(B) and 29 C.F.R. § 1980.114, if a final decision is not issued within 180 days of the date that a complainant filed his/her complaint and if the complainant has not acted in bad faith in delaying the proceedings, then the complainant may file his claim in Federal District Court after providing fifteen days notice to the administrative agency. Therefore, Complainant may choose to file his claim in U.S. District Court, which will terminate the jurisdiction of this Court. However, Complainant has provided no support for his assertion that the claim should be dismissed without prejudice. In [\*Mozingo v. The South Financial Group, Inc.\*](#), ARB No. 07-040, ALJ No. 2007-SOX-2 (ARB Feb. 8, 2007), the Board held that the dismissal of a claim so the complainant can file in U.S. District Court should be with prejudice. Complainant has a right to proceed in District Court if he wishes, but doing so relinquishes his rights in this Court.

Accordingly, IT IS HEREBY ORDERED that the complaint of Ken L. Mullens is hereby DISMISSED with prejudice. The hearing scheduled for December 10, 2007 is canceled.

A

JOSEPH E. KANE  
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, 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(a) and (b).