



Issue Date: 28 December 2009

Case No.: 2009-SOX-00065

In the Matter of

MARY J. BARKER,
Complainant,

v.

**UBS AG/UBS INVESTMENT BANK/
UBS SECURITIES, LLC,**
Respondent.

**ORDER DISMISSING THE APPEAL
AND REQUEST FOR HEARING**

This case arises out of a complaint of discrimination filed pursuant to the employee protection provisions of Public Law 107-204, 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. (“the Sarbanes-Oxley Act” or “the Act”) enacted on July 30, 2002. The Sarbanes-Oxley Act provides the right to bring a “civil action to protect against retaliation in fraud cases” under section 806 to employees who “provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of [certain provisions of the Sarbanes-Oxley Act], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders...” 18 U.S.C. § 1514A(a)(1). The Sarbanes-Oxley Act extends such protection to employees of companies “with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781)[“SEA of 1934”]; or companies that are required to file reports under Section 15 (d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d)).” 18 U.S.C. § 1514A(a). The Secretary of the Department of Labor, through its agency The Occupational Safety and Health Administration (“Secretary”, hereinafter), is authorized by the Act to conduct investigations into complaints. Parties may appeal the findings of the Secretary to the United States Department of Labor’s Office of Administrative Law Judges (“OALJ”, hereinafter).

Complainant Mary J. Barker (“Complainant” hereinafter) filed a timely complaint against UBS AG and UBS Securities, LLC., (“Respondents”, hereinafter) under the Act with the Secretary on March 14, 2005. After investigation, the Secretary issued her finding that there was no reasonable basis for the complaint. Complainant filed an appeal of that finding and complaint with OALJ, seeking a formal hearing. The case was assigned to me, and I scheduled a hearing to commence on November 19, 2009 at 9:00 a.m. in New York, New York. By letter dated

October 20, 2009, Complainant advised of her intent to file a complaint in federal district court. Pursuant to § 1514A(b)(1)(B) of the Act, an individual seeking relief may bring an action at law for de novo review in federal district court if the Secretary has not issued a final decision within 180 days of the filing of the complaint through no fault of the Complainant.

Complainant did not file a complaint in United States district court before the scheduled hearing date. On November 19, 2009, a member of my staff spoke with Complainant's counsel's staff and advised that the hearing was still set to go forward. Complainant's counsel appeared at the hearing and the record was opened. Counsel advised that Complainant expected to file a complaint in federal district court. On December 7, 2009, I issued an Order to show cause why the complaint should not be dismissed due to failure to prosecute the matter.

On December 21, 2009, Respondents advised that they did not object to the dismissal of Complainant's complaint. On December 22, 2009, Complainant filed a response that included a copy of a complaint filed in federal district court in Connecticut. The complaint was filed on December 21, 2009, more than 180 days after the lapse of the statutory period within which the Secretary must conclude its adjudication of the complaint. A copy of the filed complaint was docketed at my office on December 22, 2009. Although Complainant delayed the proceedings by not immediately filing her complaint in district court, I do not find that such action constitutes "fault" within the meaning of the Act so as to prevent her removing her case to district court. Since a hearing has not been held before OALJ in this matter, and no imminent decision is pending to resolve the case, and Complainant has filed a civil action in federal district court, I find it appropriate to relinquish jurisdiction in this matter.

ORDER

I hereby DISMISS the complaint and request for a hearing of MARY J. BARKER before the Secretary of the Department of Labor, through the Office of Administrative Law Judges.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

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).