

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 11 July 2012

CASE NO.: 2009-SOX-00018

In the Matter of:

KENNON MARA,
Complainant

v.

SEMPRA ENERGY TRADING, LLC,
Respondent

ORDER OF DISMISSAL & CANCELLING HEARING

This case arises from a complaint of discrimination filed by Kennon Mara (“Mara” or the “Complainant”) against Sempra Energy Trading, LLC (“Sempra” or the “Respondent”) pursuant to 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.A. § 1514A (West 2004). The formal evidentiary hearing is scheduled for July 30, 2012, in New York, New York.

On October 5, 2009, I issued a Decision and Order granting Respondent’s Motion for Summary Decision, which the Complainant subsequently appealed. *See Mara v. Sempra Energy Trading, LLC*, 2009-SOX-00018 (ALJ Oct. 5, 2009). On June 28, 2011, the Administrative Review Board (“ARB” or the “Board”) reversed my summary decision and remanded the case for further proceedings. *Mara v. Sempra Energy Trading, LLC*, ARB No. 10-051, ALJ No. 2009-SOX-00018 (ARB June 28, 2011).

On September 1, 2011, Mara filed a Motion to Make Waiver Null and Void, requesting that I render void her previous counsel's waiver of her right to remove her claim to federal district court pursuant to 18 U.S.C. § 1514A(b)(1)(B). On September 28, 2011, I denied the motion, and on October 6, 2011, Mara filed a Motion for Reconsideration. On November 25, 2011, I denied the Motion for Reconsideration, but granted Mara's request for certification of the waiver issue to the Board for interlocutory appeal. On December 9, 2011, Mara filed with the Board a Petition for Certified Interlocutory Review, which the Board denied on January 31, 2012. On March 15, 2012, Mara filed a Motion for Reconsideration for Interlocutory Review, and the Board denied the Motion for Reconsideration on March 20, 2012.

On May 9, 2012, Mara filed a "Motion to Withdraw Claim Pursuant to 29 C.F.R. 1980.114" and on May 29, 2012, she filed a "Clarification/Correction to My Motion to Withdraw My Sox Claim Pursuant to 29 C.F.R. 1980.114." The Respondent filed oppositions to both filings, and Mara filed a reply to their oppositions. On June 6, 2012, I held a telephonic hearing on-the-record, during which I denied Mara's motion to withdraw under § 1980.114 due to the fact that her prior counsel waived her right to proceed in federal district court under this provision. During the hearing, Mara firmly stated numerous times on the record that she does not intend on proceeding with her claim in this forum. She clearly stated in her filings and on the record that she will not attend the scheduled hearing in New York on July 30, 2012, conduct discovery, or otherwise prosecute her claim.

Based on Mara's statements during the June 6th telephonic hearing and in her recent filings, on June 8, 2012, I issued an Order to Show Cause requiring Mara to state why her claim should not be dismissed with prejudice due to the fact that she has abandoned her claim and otherwise failed to prosecute her claim. On June 11, 2012, the Respondents filed a Motion to

Dismiss for Lack of Prosecution, raising similar issues as presented in the Order to Show Cause. Mara filed a motion for an extension of time to reply to both my Order to Show Cause and the Respondent's Motion to Dismiss, which I granted. Mara filed a timely reply via email on June 29, 2012. In her reply, Mara again stated her intention to "discontinue the proceedings before an ALJ" due to her "dire economic circumstances and [her] inability to navigate through this litigation as a pro se litigant." On July 10, 2012, I conducted a final hearing on the record with the parties.

Based on Mara's consistent and unequivocal statements in her recent filings associated with her Motion to Withdraw, her reply to my Order to Show Cause and the Respondent's Motion to Dismiss, and during several telephonic hearings and conferences, I find that Mara has abandoned her claim and as a result, dismissal is appropriate at this time. *See Matthews v. Ametek, Inc.*, ARB No. 11-036, ALJ No. 2009-SOX-26 (ARB May 31, 2012) ("The ALJs have authority to dismiss a case on their own initiative for lack of prosecution This control is vested in the ALJs' interests in 'manag[ing] their dockets in an effort to 'achieve the orderly and expeditious disposition of cases.'" (citations omitted). Although Mara disputes classifying her "inability to continue proceedings before an ALJ" as an "abandonment" of her claim, the end result is the same. I appreciate Mara's reasons for not proceeding with her claim, namely the cost of conducting discovery and the complexity of the issues involved, but she has remained firm in her decision not to proceed in this venue, and as such, the appropriate course of action at this time is dismissal of the case. I also understand Mara's stated concern that a dismissal with prejudice may adversely affect her additional claims in other forums. In that regard, the dismissal is with prejudice only to the extent that I have authority over the federal whistleblower claim under SOX.

ORDER

For the reasons stated on the record during the July 10, 2012 hearing which are adopted and incorporated herein by reference, and for the reasons stated above, I find that Mara has not shown good cause to avert dismissal of this case due to her abandoning her claim and otherwise failing to prosecute her claim. Accordingly, it is hereby **ORDERED** that Mara's claim under SOX is **DISMISSED** with prejudice pursuant to 29 C.F.R. § 18.39(b) and § 18.29, and the evidentiary hearing scheduled for July 30, 2012 is **CANCELLED**.

SO ORDERED.

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JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts