

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 September 2009

CASE NO.: 2009-SOX-00053

In the Matter of:

MICHAEL NOMMENSEN,
Complainant,

vs.

NORTHSTAR FINANCIAL, AND
RODNEY PALMER, OWNER,
Respondents.

ORDER REMANDING CASE TO OSHA

This case arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley” or “SOX”), 18 U.S.C. §1514A *et seq.* The proceeding was initiated before the Office of Administrative Law Judges (“OALJ”) on June 19, 2009, when the Complainant asked for a hearing before the Office of Administrative Law Judges (“OALJ”) after the Regional Administrator of the Occupational Health and Safety Administration (“Administrator”) issued a decision on May 19, 2009, dismissing a complaint he filed against NorthStar Financial and Rodney S. Palmer, the owner of NorthStar Financial, based on a conclusion that NorthStar Financial and Rodney Palmer were not covered by Sarbanes-Oxley.

After this case was assigned to me, I issued a Notice of Hearing on June 25, 2009, and scheduled the matter for a hearing on September 23, 2009, in Bakersfield, California. The Notice of Hearing was served on the Complainant and on NorthStar Financial and Rodney Palmer at addresses identified on the cover page of the Final Investigation Report that had been provided to the OALJ. The cover page listed NorthStar Financial and Rodney Palmer with addresses in Minneapolis, Minnesota.

On July 10, 2009, the Complainant contacted my legal assistant and informed her that the respondents’ addresses were incorrect and that they should have been addresses in Bakersfield, California. After learning this, I concluded that the Administrator’s Determination had identified the wrong employers. On July 13, 2009, I issued an order vacating the hearing and ordering the parties to show cause why this case should not be remanded for a proper investigation of the correct employers. The order was served on the NorthStar employers in Minneapolis, Minnesota as well as Bakersfield, California.

In response to my order the Bakersfield NorthStar filed a response asserting that the determination was correct because NorthStar Financial and Rodney Palmer were not covered by Sarbanes-Oxley. Bakersfield NorthStar acknowledged the case could be remanded to OSHA but urged that the case proceed forward based on the previously completed investigation. The Bakersfield Northstar also acknowledged, however, that it had not heard of this investigation until it received my Order to Show Cause. The Minneapolis NorthStar did not respond to my Order to Show Cause.

After receiving the response to my Order to Show Cause, I conducted telephone conference calls with the Complainant, his counsel, Bakersfield NorthStar Financial's counsel, Joshua Paul and Jim Wulff from OSHA, and Chris Wilkinson from the Department of Labor's Solicitor's Office to discuss what had happened in this case and how to proceed.

During the last conference call on August 20, 2009, counsel for the Department of Labor asked me to stay the proceedings so that OSHA could investigate the matter further so a decision could be made as to how best to proceed. I agreed to the stay.

On September 17, 2009, the Department of Labor filed a motion asking for a "Procedural Remand of Matter to OSHA" to provide OSHA with an opportunity to clarify its Determination Notice. The Department of Labor acknowledged that a remand may be considered improper but argued that a narrow remand for procedural purposes in this particular proceeding was appropriate.

I agree. The request for a procedural remand is GRANTED. It is hereby ORDERED that this case be REMANDED to the Occupational Health and Safety Administration for a clarification of its determination notice. In light of this action, there is not need for the follow-up status conference in this case that was scheduled for September 30, 2009, at 9:00 a.m. and that status conference is cancelled.

A

JENNIFER GEE
Administrative Law Judge

San Francisco, California