



In the Matter of:

PETER LINDNER,

ARB CASE NO. 2018-0047

COMPLAINANT,

ALJ CASE NO. 2017-CFP-00007

v.

DATE: FEB 25 2020

CITIMORTGAGE, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Peter Lindner; *pro se*; New York, New York

For the Respondent:

Robert M. Tucker, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*; New York, New York

Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge* and James A. Haynes and Heather C. Leslie, *Administrative Appeals Judges*

ORDER DISMISSING INTERLOCUTORY APPEAL

PER CURIAM. This case arises under the employee protection provisions of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (CFPA or Act),¹ and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX).² Peter Lindner filed a complaint alleging that Respondent CitiMortgage, Inc., violated the CFPA and SOX by

¹ 12 U.S.C. § 5567 (2010), as implemented at 29 C.F.R. Part 1985 (2018).

² 18 U.S.C. § 1514A (2010), as implemented at 29 C.F.R. Part 1980 (2018).

terminating his “job assignment in retaliation for voicing concerns about unsupported mortgage CCAR statements.”³ OSHA investigated the complaint and found that it was untimely.

Lindner requested a hearing on his complaint before a Department of Labor Administrative Law Judge (ALJ). On March 22, 2018, the ALJ issued an Order Denying Respondent’s Motion to Dismiss. On April 16, 2018, CitiMortgage filed a Motion for Certification for interlocutory review in which it argued that Lindner is not an “employee” or “covered employee” under either the CFPA or SOX and therefore does not have standing to bring a claim under either statute.⁴ On May 3, 2018, the ALJ issued an “Order Granting Request to Certify Issue for Interlocutory Appeal and Order Staying Proceedings” (Order). The Order certified to the Board “[t]he issue of whether Complainant has standing to bring his claim under the CFPA and SOX.”⁵

The Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals.⁶ When a party seeks interlocutory review of an ALJ’s order, the ARB has elected to look to the procedures found at 28 U.S.C. § 1292(b)⁷ to

³ OSHA Determination at 1.

⁴ Lindner filed a separate complaint alleging that Citibank, N.A. violated the SOX by refusing to hire him for employment. The ALJ, finding that the complaint in that case involved questions of law and fact related to the case before us, consolidated the two cases. See October 27, 2017 Order Cancelling Hearing, Order Compelling Discovery, and Order Consolidating Cases [2018-SOX-00002 and 2017-CFP-00007]. The ALJ bifurcated the cases to accommodate the interlocutory appeal of the coverage issue in this case. On August 8, 2018, the ALJ dismissed 2018-SOX-00002 due to Lindner’s repeated failures to engage in discovery and comply with procedural orders, and we affirmed the dismissal.

⁵ Order at 3.

⁶ *Turin v. Amtrust Fin. Servs., Inc.*, ARB No. 17-004, ALJ No. 2010-SOX-018, slip op. at 3 (ARB Apr. 20, 2017).

⁷ 28 U.S.C. § 1292(b) provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion,

determine whether to accept an interlocutory appeal for review.⁸

Like the federal appellate courts, the Board applies the finality requirement in the interest of “combin[ing] in one review all stages of the proceeding that effectively may be reviewed and corrected if and when” the ALJ issues a decision on the merits of the case.⁹ Nonetheless, the ARB is authorized to grant such orders in its discretion when exceptional circumstances warrant such process.¹⁰

The Board also applies the collateral order exception to the finality requirement, established in *Cohen v. Beneficial Industrial Loan Corp.*,¹¹ which permits appeals from interlocutory orders rendered in the course of ALJ proceedings that meet certain criteria. Specifically, the collateral order exception allows the review of orders that “conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and [are] effectively unreviewable on appeal from a final judgment.”¹² In determining whether to accept an interlocutory appeal, we strictly construe the *Cohen* collateral appeal exception to avoid the serious “hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract litigation.”¹³

permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order

⁸ *Office of Fed. Contract Compliance Programs v. JPMorgan Chase & Co.*, ARB No. 17-063, ALJ No. 2017-OFC-007 (ARB Oct. 5, 2017); *Nichols Tree Farms*, ARB No. 16-008, ALJ No. 2015-TAE-013 (ARB Jan. 19, 2016).

⁹ *Greene v. Env’tl Prot. Agency*, ARB No. 02-050, ALJ No. 2002-SWD-001, slip op. at 4 (ARB Sept. 18, 2002).

¹⁰ Secretary’s Order No. 01-2020, Secretary’s Order, para. 5 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board) (February 21, 2020) (“Secretary’s Order”) (delegating to the Board “discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute”).

¹¹ 337 U.S. 541 (1949).

¹² *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978); see *Greene*, ARB No. 02-050, slip op. at 4.

¹³ *Corrugated Container Antitrust Litig. Steering Comm. v. Mead Corp.*, 614 F.2d 958, 961 n.2, (5th Cir.1980) (quoting *Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1094 (5th Cir. 1977)).

Lindner has failed to allege exceptional circumstances sufficient to merit interlocutory review in this case. Resolving the issue of whether Lindner is a covered employee under the CFPB or SOX requires specific findings of fact not before us, and a ruling on that question is fully reviewable on appeal.

CitiMortgage has not offered any reasons why we should depart from the usual practice of avoiding piecemeal appeals. It has not satisfied the collateral order exception to the finality rule nor has it presented to the Board any reason to depart from its well-established precedent eschewing interlocutory review. Accordingly, we set aside our Notice of Acceptance of Appeal and Order Establishing Briefing Schedule (February 8, 2019), **DENY** the Petition for Review, and **REMAND** the case to the ALJ for further adjudication.

SO ORDERED.