



**In the Matter of:**

**PATRICIA A. ALLEN,  
LAURA L. WALDON,  
and DANA BREAUX,**

**COMPLAINANTS,**

**v.**

**STEWART ENTERPRISES, INC.,**

**RESPONDENT.**

**ARB CASE NO. 05-059**

**ALJ CASE NOS. 2004-SOX-00060  
2004-SOX-00061  
2004-SOX-00062**

**DATE: August 17, 2005**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

*William H. Reinhardt, Esq., Dara H. Masan, Esq., Blue Williams, L.L.P.,  
Metairie, Louisiana*

*For the Respondent:*

*Rebecca G. Gottsegen, Esq., Jones, Walker, Waechter, Poitevent, Carrere &  
Denegre, L.L.P., New Orleans, Louisiana*

**FINAL DECISION AND ORDER DISMISSING APPEAL**

The Complainants, Patricia Allen, Laura Waldon, and Dana Breaux, filed a complaint on February 2, 2004, under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX),<sup>1</sup> and its

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<sup>1</sup> 18 U.S.C.A. § 1514A (West Supp. 2003).

implementing regulations<sup>2</sup> with the Department of Labor's Occupational Safety and Health Administration (OSHA). The Complainants alleged that the Respondent, Stewart Enterprises, Inc. terminated their employment in violation of SOX's whistleblower protection provisions.<sup>3</sup> OSHA investigated the complaint and issued a letter advising the parties that the complaint lacked merit because Stewart Enterprises did not terminate the Complainants's employment in retaliation for protected activity.

The Complainants requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On February 15, 2005, the ALJ issued an Order Denying Motion to Amend the Complaint and Recommended Decision and Order (R. D. & O.). The ALJ found that Stewart Enterprises did not terminate the Complainants's employment in violation of the SOX whistleblower provision.

The Complainants filed a Petition for Review of the R. D. & O. with the Administrative Review Board on March 22, 2005.<sup>4</sup> On July 18, 2005, the Complainants informed the Board that they intended to pursue their SOX case in federal court.

If the Board has not issued a final decision within 180 days of the date on which the complainant filed the complaint and there is no showing that the complainant has acted in bad faith to delay the proceedings, the complainant may bring an action at law or equity for de novo review in the appropriate United States district court, which will have

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<sup>2</sup> 29 C.F.R. Part 1980 (2004).

<sup>3</sup> Title VIII of Sarbanes-Oxley is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806 covers companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 781, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies. Section 806 protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. 68 FR 31864 (May 28, 2003).

<sup>4</sup> See 29 C.F.R. § 1980.110(a). The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under SOX. Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

jurisdiction over the action without regard to the amount in controversy.<sup>5</sup> Accordingly, because the Complainants have opted to pursue their SOX complaint in district court rather than at the Board, we **DISMISS** their appeal.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>5</sup> 18 U.S.C.A. § 1514A(b)(1)(B); 29 C.F.R. § 1980.114. As is the usual case, the 180-day period for deciding the case had expired before the Complainants filed their petition with the Board.