



JOSEPH WALTERS,

ARB CASE NO. 09-080

COMPLAINANT,

ALJ CASE NO. 2008-SOX-070

v.

DATE: November 13, 2009

DEUTSCHE BANK AG, et al.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL DECISION AND ORDER DISMISSING PETITION FOR
INTERLOCUTORY REVIEW**

This proceeding arose when Joseph Walters, former European Head of Insurance Asset Management Relationships for Deutsche Bank AG’s Insurance Asset Management Division, filed a complaint against Deutsche Bank AG and others alleging that the Respondents had violated the employee protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ The Occupational Safety and Health Administration dismissed the

¹ 18 U.S.C.A. § 1514A (West Supp. 2008). The SOX’s employee protection provision protects employees against retaliation by companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934 and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934, or any officer, employee, contractor, subcontractor, or agent of such companies because the employee provided information to the employer, a Federal agency, or Congress which the employee reasonably believes constitutes a violation of 18 U.S.C. sections 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), or 1348 (fraud “in connection” with “any security” or the “purchase or sale of any security), or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, the SOX protects employees 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.

complaint on the ground that resolution of the complaint would require the extraterritorial application of the SOX. Walters requested a hearing before a Department of Labor Administrative Law Judge (ALJ).²

On March 23, 2009, the ALJ issued an order denying the Respondents' request for summary decision. The ALJ rejected the Respondents' arguments that they were not covered SOX employers, finding that Walters's employer is publicly traded in the United States and that all elements essential to establishing a prima facie violation of the SOX's whistleblower protection provision allegedly occurred within the United States. The ALJ further found that there was no question of extraterritorial application of the SOX because Walters sought application of American law for the damages he suffered as a consequence of the alleged SOX violations that occurred in the United States. Accordingly, the ALJ determined that Walters was entitled to be heard on the merits of his claim.³

The Respondents filed an interlocutory appeal of the ALJ's Summary Decision with the Administrative Review Board.⁴ Before the Board acknowledged the appeal or established the briefing schedule, the parties filed a Joint Motion for Stay. The parties averred that they "ha[d] reached a preliminary agreement which if finalized w[ould] result in a motion for dismissal with prejudice of the matter pending below before the Administrative Law Judge."⁵ Because the parties established good cause for the stay, we granted the parties' motion.

On July 7, 2009, the ALJ issued an Order Approving Settlement and Dismissing [the Complaint]. The ALJ indicated that he had carefully reviewed the terms of the

² See 29 C.F.R. § 1980.106(a)(2009).

³ Summary Decision (S. D.) at 41-42.

⁴ The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under SOX to the Administrative Review Board. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). The Secretary's delegated authority to the Board includes "discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute." *Id.* at 64,273. See *Johnson v. Siemens Building Techs.*, ARB No. 07-010, ALJ No. 2005-SOX-015, slip op. at 2 (ARB Jan. 19, 2007).

⁵ If the parties request withdrawal of the complaint before the ALJ because they have entered into a settlement of the SOX complaint, this settlement must be submitted to the ALJ for his approval. *Ambrose v. U.S. Foodservice, Inc.*, ARB No. 06-096, ALJ No. 2005-SOX-105, slip op. at 2 (ARB Sept. 28, 2007). *Accord Mann v. Schwan's Food Co.*, ARB No. 90-001, ALJ No. 2008-STA-027, slip op. at 2-3 (ARB Dec. 31, 2008).

settlement agreement, and as construed, he found the terms of the Settlement Agreement to be fair, adequate, and reasonable. He approved the settlement and dismissed the complaint with prejudice.

Accordingly, because the ALJ has dismissed the complaint with prejudice, we **DISMISS** the petition for interlocutory review as moot.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge