



In the Matter of:

RANDY SANTORO,

ARB CASE NO. 11-052

COMPLAINANT,

ALJ CASE NO. 2010-SOX-046

v.

DATE: August 5, 2011

**TEKNI-PLEX, INC., COLORITE POLYMERS
a/k/a/ COLORITE PLASTICS CO., a division of
Tekni-Plex, Inc., PURETEC INTERNATIONAL,
and MIGUEL NISTALL III,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Randy Santoro, *pro se*, Jersey City, New Jersey

Respondent:

Ernest Edward Badway, Esq.; *Fox Rothschild LLP*, New York, New York

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING APPEAL

Randy Santoro, the Complainant, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent retaliated against him in violation of 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 (SOX).¹ OSHA found that the Respondent did not fall within the SOX's coverage, and therefore it denied Santoro's complaint.

¹ 18 U.S.C.A. § 1514A (Thomson West 2010).

Santoro requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On April 20, 2011, the ALJ issued a Recommended Decision and Order (R. D. & O.). The ALJ concluded that the Respondent does not fall within SOX's coverage because it does not issue securities registered under section 12, nor is it required by law to file reports under section 15(d) of the Securities Exchange Act.²

Santoro filed a petition for review with the Administrative Review Board.³ On May 17, 2011, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule. The terms of the Board's order required the Complainant, to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before June 9, 2011. The Board further cautioned Santoro, that if he failed to timely file his brief, the Board could dismiss his petition for review or impose other sanctions.

Although warned that the Board could dismiss the Complainant's petition for review if he did not timely file his opening brief, Santoro did not file a brief in compliance with the Board's order. The Respondent then filed a motion requesting the Board to dismiss Santoro's petition for review because he had failed to comply with the Board's briefing order.

Accordingly, we ordered Santoro to show cause no later than July 14, 2011, why the Board should not dismiss his petition for review because he failed to prosecute his appeal in accordance with the Board's briefing order.⁴ The Board again cautioned Santoro that if he failed to timely respond to the Board's Order, it could dismiss his appeal without further notice. Santoro has failed to file a response to the Board's Show Cause Order.

DISCUSSION

The Board's authority to effectively manage its affairs, including the authority to require parties to comply with Board briefing orders, is necessary to "achieve orderly and

² The ALJ noted that the Respondent made such filings only pursuant to a private indenture agreement. R. D. & O. at 9.

³ The Secretary of Labor has delegated her authority to issue final agency decisions under the SOX to the Administrative Review Board. 29 C.F.R. § 1980.110(a) (2010). *See* Secretary's Order 1-2010 (Delegation of Authority and Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

⁴ The Board also gave the Respondents the opportunity to reply to Santoro's response to the Order, and we suspended the briefing schedule.

expeditious disposition of cases.”⁵ This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁶

Considering that Santoro is proceeding in this appeal without representation by counsel, this Board is willing to extend to him a degree of latitude in complying with the Board’s procedural requirements. This latitude, however, is not without bounds. The Board notified Santoro of his obligation to file an opening brief and warned him that if he failed to do so, the Board could dismiss his appeal. Nevertheless Santoro failed to file an opening brief as ordered. The Board then gave Santoro the opportunity to explain why he had failed to file his brief, and he filed no response.

The Board recognizes that dismissal of an appeal for failure to file a conforming brief is a very serious sanction and one not to be taken lightly. But even if the Board considered the lesser sanction of construing Santoro’s petition for review as a brief and requiring the Respondent to reply only to those arguments set forth in the petition, dismissal would be required. It would serve no purpose to require the Respondent to respond to the points raised in the petition for review because the petition fails to adduce any argument in rebuttal of the ALJ’s conclusion that the Respondent does not fall within SOX’s coverage because it does not issue securities registered under section 12 and is not required by law to file reports under section 15(d) of the Securities Exchange Act.

Accordingly, we **DISMISS** Santoro’s appeal because he has failed to file a timely brief in support of his petition for review and has failed to demonstrate any cause, much less good cause, for his failure to do so.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

⁵ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁶ *See Crown v. City of Chicago*, ARB No. 11-015, ALJ No. 2010-SOX-060 (ARB July 15, 2011); *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-7 (ARB Mar. 19, 2003) (dismissing complaint for failure to comply with briefing order); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).