



IN THE MATTER OF:

VANESSA GIFALDI,

ARB CASE NO. 13-060

COMPLAINANT,

ALJ CASE NO. 2011-SOX-013

v.

DATE: July 29, 2013

OCTAGON, INC., and INTERPUBLIC  
GROUP OF COMPANIES, INC.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Complainant:*

Matthew Seth Sarelson, Esq.; *Conrad & Scherer*, Fort Lauderdale, Florida

*For the Respondent:*

Robert R. Niccolini, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*;  
Washington, District of Columbia

BEFORE: Luis A. Corchado, *Administrative Appeals Judge*, and Lisa Wilson  
Edwards, *Administrative Appeals Judge*

### FINAL DECISION AND ORDER DISMISSING APPEAL

On May 23, 2013, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case arising under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).<sup>1</sup> The Board cautioned

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<sup>1</sup> 18 U.S.C.A. § 1514A (Thomson/West Supp. 2012). The Secretary of Labor has delegated authority to issue final agency decisions under the Sarbanes-Oxley Act (SOX) to the Administrative Review Board (ARB or Board). See Secretary's Order 02-2012

the Complainant that if she failed to timely file her opening brief, the Board could dismiss her petition for review or impose other sanctions.

The Complainant did not file an opening brief. On July 1, 2013, the Board received Respondent's Motion to Dismiss Complainant's Petition for Review. The Respondent avers that the Board should dismiss the Complainant's petition for two reasons: 1) she has failed to timely file her opening brief and 2) her petition for review does not specifically identify the basis for the Board's review of the ALJ's Decision and Order in her case. Accordingly, we ordered Gifaldi to show cause no later than July 22, 2013, why we should not dismiss her appeal.

On July 16th, 2013, the Board received a letter from the Complainant's counsel stating that in response to the show cause order, the Complainant will "withdraw the appeal filed in this matter."

## DISCUSSION

The SOX's implementing regulations provide:

At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal.<sup>[2]</sup>

The Complainant has given written notice of her intent to withdraw her objections to the Decision and Order – Dismissal of Complaint,<sup>3</sup> issued by a Department of Labor Administrative Law Judge, from which she petitioned the Board for review. In light of

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(Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 222 (Nov. 16, 2012). *See also* 29 C.F.R. § 1980.110.

<sup>2</sup> 29 C.F.R. § 1980.111(c).

<sup>3</sup> *Gifaldi v. Octagon, Inc.*, ALJ No. 2011-SOX-013 (May 3, 2013).

the Complainant's failure to file an opening brief as required by the Board's briefing order, we **APPROVE** the withdrawal of her appeal.<sup>4</sup>

**SO ORDERED.**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

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<sup>4</sup> The ARB has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements. *Batton v. Ryan Int'l Airways*, ARB No. 11-085, ALJ No. 2009-AIR-029, slip op. at 2-3 (ARB Mar. 2, 2012); *Santoro v. Tekni-Plex, Inc.*, ARB No. 11-052, ALJ No. 2010-SOX-046, slip op. at 2-3 (ARB Aug. 5, 2011). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff'd sub nom. Ellison v. U.S. Dep't of Labor*, 09-13054 (11th Cir. June 17, 2010).