

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

SACHIN SHAH,

ARB CASE NO. 2020-0063

COMPLAINANT,

ALJ CASE NO. 2019-SOX-00015

v.

DATE: January 31, 2023

ALBERT FRIED & COMPANY,

and

TD SECURITIES LLC,

RESPONDENTS.

Appearances:

For the Complainant:

Sachin Shah; *pro se*; North Caldwell, New Jersey

For the Respondents:

S. Jeanine Conley Daves, Esq.; Jonathan Shapiro, Esq.; *Little Mendelson, P.C.*; New York, New York

Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL and PUST, Administrative Appeals Judges

ORDER DENYING SECOND MOTION FOR RECONSIDERATION

HARTHILL, Chief Administrative Appeals Judge:

This case arises under the whistleblower protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX or Section 806), as amended, and its implementing

regulations.¹ On August 22, 2022, the Administrative Review Board (ARB or Board) issued a Decision and Order (D. & O.), dismissing the case of Sachin Shah (Complainant or Shah).² In the D. & O., the Board affirmed the Administrative Law Judge's (ALJ) Order Granting Summary Decision and Dismissing Complaint, issued on June 30, 2020, because the ALJ properly ruled as to the affirmative defense.

On October 19, 2022, Complainant filed a 150-page Motion for Reconsideration with approximately 369 pages of exhibits. Complainant's Motion for Reconsideration far exceeded the length limitations outlined in the Board's Notice of Appeal and Order Establishing Briefing Schedule (Briefing Schedule), issued on September 2, 2020. Therefore, on November 4, 2022, the Board denied Complainant's Motion for Reconsideration without prejudice and with leave to refile in compliance with the Briefing Schedule's length limitations.³

On November 21, 2022, Complainant filed a Second Motion for Reconsideration, which complied with the briefing schedule's length limitations, along with approximately 360 pages of exhibits.⁴ For the following reasons, we deny Complainant's Second Motion for Reconsideration.

DISCUSSION

The Board denies Complainant's Second Motion for Reconsideration because Complainant's Motion does not satisfy any of the limited circumstances for reconsideration.

The Board will reconsider a decision and order only under limited circumstances. These circumstances include whether the movant has demonstrated: (i) material differences in fact or law from those presented to the Board of which the

¹ 18 U.S.C. § 1514A; 29 C.F.R. Part 1980 (2022).

² *Shah v. Albert Fried & Co.*, ARB No. 2020-0063, ALJ No. 2019-SOX-00015 (ARB Aug. 22, 2022) (Decision and Order).

³ *Shah v. Albert Fried & Co.*, ARB No. 2020-0063, ALJ No. 2019-SOX-00015, slip op. at 2-3 (ARB Nov. 4, 2022) (Order Denying Motion for Reconsideration Without Prejudice and With Leave to Refile).

⁴ On November 14, 2022, Complainant filed a Motion, which the Board construes as a Motion to Refile Complainant's Original Motion for Reconsideration in Its Entirety (Motion to Refile). The Board denies Complainant's Motion to Refile his entire original Motion for Reconsideration, as filed on October 19, 2022. However, Complainant's Motion to Refile also included an alternative request to file a Second Motion for Reconsideration in compliance with the Briefing Schedule, while also attaching most of his original exhibits and appendix. The Board grants Complainant's alternative request. The Board also notes that Complainant's Second Motion for Reconsideration is consistent with Complainant's alternative request.

moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, or (iv) failure to consider material facts presented to the Board before its decision.⁵

Complainant outlines several arguments that he claims relate to three of the four limited circumstances for reconsideration (i, ii, and iv). However, the Board issued a decision based on the affirmative defense and Complainant does not present clear arguments that justify reconsideration of the Board's ruling regarding the affirmative defense. In other words, Complainant fails to present relevant arguments that fall within any of the limited circumstances under which we will reconsider our decisions. Nonetheless, we have addressed some of Complainant's arguments below for the sake of clarity and transparency.

The first factor for reconsideration is whether the movant has demonstrated "material differences in fact or law from those presented to the Board of which the moving party could not have known through reasonable diligence." Complainant raises several arguments that he claims relate to the first factor, including that the ARB failed to consider Complainant's material evidence and the ARB failed to protect Complainant by not addressing Complainant's "Motion for TRO/Preliminary Injunction" (Motion for TRO).⁶ Complainant's arguments are inapposite to the circumstances of the first factor because Complainant has not presented any "material differences in fact or law of which the movant could not have known through reasonable diligence." Therefore, Complainant has not demonstrated sufficient grounds to reconsider the Board's D. & O. under the first factor.

The second factor for reconsideration is whether the movant has demonstrated "new material facts that occurred after the Board's decision." Regarding the second factor, Complainant claims that he has been subjected to post-termination retaliation since the Board issued its D. & O. on August 22, 2022.⁷ However, Complainant has not clearly presented evidence of post-termination retaliation that occurred after the Board's D. & O. Instead, Complainant cites to his filings from 2020 to demonstrate evidence of post-termination retaliation.⁸ Complainant's filings from 2020 cannot include "new material facts that occurred

⁵ *Perkins v. Cavicchio Greenhouses, Inc.*, ARB No. 2022-0018, ALJ No. 2019-ACA-00005, slip op. at 2 (ARB Dec. 16, 2022) (Order Denying Reconsideration) (citing *Trivedi v. Gen. Elec. and GE Healthcare*, ARB No. 2022-0026, ALJ No. 2022-SOX-00005, slip op. at 2-3 (ARB Oct. 28, 2022) (Order Denying Reconsideration)).

⁶ Complainant's Second Motion for Reconsideration (Second Mot. Recons.) at 1-2.

⁷ *Id.* at 3.

⁸ *Id.*

after the Board's decision." Therefore, Complainant has not demonstrated sufficient grounds to reconsider the Board's D. & O. under the second factor.

The fourth factor for reconsideration is whether the movant has demonstrated "failure to consider material facts presented to the Board before its decision." Complainant raises several arguments that he claims relate to the fourth factor. The Board considers three of his arguments below.

First, Complainant essentially argues that the Board failed to consider Complainant's material facts and evidence, citing to several of his filings which allegedly show that Complainant met all the requirements for a SOX claim.⁹ However, the Board issued a decision based on the affirmative defense and Complainant has not clearly pointed to material evidence that the Board failed to consider regarding the affirmative defense.¹⁰

Second, Complainant argues that the Board failed to address his Motion for TRO.¹¹ However, the Board addressed the issue in its D. & O.¹² The ALJ had denied Complainant's Motion for TRO as moot after the ALJ granted summary decision and dismissed Complainant's complaint. Subsequently, the Board affirmed the ALJ and determined that Complainant had failed to establish that the ALJ's ruling was improper.¹³ Here, Complainant has not presented sufficient grounds for the Board to reconsider its decision that the Motion for TRO was moot after the dismissal of Complainant's complaint.

Finally, Complainant argues that there is a "systemic breakdown within DOL/OSHA/ALJ/ARB and FINRA" regarding the handling of Complainant's claim.¹⁴ Complainant raises a variety of allegations, including that Respondents' counsel made misrepresentations and "false statements" in filings.¹⁵ However, even though Complainant asserts several misrepresentations, Complainant has not clearly explained or pointed to evidence that shows why Respondents' counsel made false statements. In addition, the Board issued a decision based on the affirmative defense and Complainant has not clearly explained how the alleged misrepresentations would impact the Board's ruling regarding the affirmative

⁹ *Id.* at 4-6.

¹⁰ *See U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (explaining that Judges are not expected to mine the parties' briefs to discern their arguments) (citation omitted).

¹¹ Second Mot. Recons. at 6-9.

¹² *Shah*, ARB No. 2020-0063, slip op. at 11 n.59 (Decision and Order).

¹³ *Id.*

¹⁴ Second Mot. Recons. at 9-17.

¹⁵ *Id.* at 10-14.

defense. For the foregoing reasons, Complainant has not demonstrated sufficient grounds to reconsider the Board's D. & O. under the fourth factor.

Upon review of Complainant's Second Motion for Reconsideration, we determine that Complainant has not demonstrated any sufficient grounds for the Board to reconsider our decision. Accordingly, the Board **DENIES** the Complainant's Second Motion for Reconsideration.¹⁶

SO ORDERED.

[REDACTED]

SUSAN HARTHILL
Chief Administrative Appeals Judge

[REDACTED]

THOMAS H. BURRELL
Administrative Appeals Judge

[REDACTED]

TAMMY L. PUST
Administrative Appeals Judge

¹⁶ To the extent Complainant has raised other arguments not specifically addressed herein, the remainder of Complainant's arguments and contentions are denied.