U.S. Department of Labor

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

In the Matter of:

SACHIN SHAH,

COMPLAINANT,

v.

ALBERT FRIED & COMPANY,

and

TD SECURITIES LLC,

RESPONDENTS.

ARB CASE NO. 2020-0063

ALJ CASE NO. 2019-SOX-00015

DATE: August 22, 2022

Appearances:

For the Complainant:
Sachin Shah; *pro se*; North Caldwell, New Jersey

For the Respondents:
S. Jeanine Conley Daves, Esq.; Jonathan Shapiro, Esq.; *Littler Mendelson, P.C.*; New York, New York

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

DECISION AND ORDER

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] Complainant Sachin Shah (Complainant or Shah) filed a complaint against Albert Fried & Company (Albert Fried)[2] and TD Securities LLC (TD Securities) (collectively, Respondents), alleging that Respondents terminated Complainant's employment because he engaged in conduct protected by SOX. On June 30, 2020, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) granting Respondents' Motion for Summary Decision and dismissing Shah's complaint. For the following reasons, we affirm the ALJ's decision.

BACKGROUND[3]

Complainant worked for Albert Fried as a Special Situations and Merger Arbitrage Strategist for several years beginning on June 17, 2013. Complainant's role was "highly specialized" and involved "conduct[ing] research and provid[ing] analysis to clients in the special situations, merger arbitrage and event driven space, which clients then used to trade equities."[4] Complainant's work was not part of Albert Fried's core businesses: "he was the sole employee at Albert Fried conducting such merger arbitrage analysis."[5] On January 3, 2017, the day TD Securities[6] acquired Albert Fried,[7] TD Securities terminated his employment.

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

2 TD Securities LLC acquired Albert Fried & Company on January 3, 2017. Albert Fried & Company is now known as TD Prime Services LLC. Respondents' Brief at 1. For the purposes of this Decision, we will refer to TD Prime Services LLC by its former name of Albert Fried.

3 The facts recited in the Background Section are taken from the ALJ's D. & O., unless otherwise indicated.

4 D. & O. at 3 (citations and inner quotations omitted).

5 *Id*. (citations omitted).

6 TD Securities is the investment banking and capital markets subsidiary of the Toronto Dominion Bank, the sixth largest bank in North America with over 3,800 employees in offices worldwide. TD Securities provides a wide range of capital market products to corporate, government and institutional clients. *Id.* at 2.

7 January 3, 2017, was the closing date of TD Securities' acquisition of Albert Fried. *Id*. at 4. Prior to its acquisition, Albert Fried was a New York City based broker dealer, founded in 1919, and a premier financial services organization, providing prime brokerage, clearing, securities lending, trading services, and trading technology along with various other services, such as merger arbitrage analysis. *Id.* at 3.

In 2015, TD Securities identified Albert Fried as a potential acquisition target and privately began conducting due diligence on the company. TD Securities sought to offer expanded services to its hedge fund and other international clients. To serve that goal, TD Securities' acquisition focused on Albert Fried's prime brokerage, self-clearing and securities lending services and capabilities, and its prime brokerage technology platform. As part of its due diligence, TD Securities management and human resources personnel evaluated which of Albert Fried's forty-seven employees would transition over to TD Securities along with those core businesses and services being targeted in the acquisition.[8]

On or about September 13, 2016, TD Securities publicly announced that it would acquire Albert Fried.[9] On January 3, 2017, the closing date of TD Securities' acquisition of Albert Fried, TD Securities terminated eleven Albert Fried employees, including Complainant.[10]

Following his termination, Complainant filed a timely complaint under SOX with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). On November 27, 2018, OSHA issued an order dismissing the complaint.[11] Complainant subsequently objected to OSHA's ruling and requested a hearing before an ALJ, which was referred to the Office of Administrative Law Judges. On August 27, 2019, Respondents filed a Motion for Summary Judgment, which the ALJ granted on June 30, 2020.[12]

In the D. & O., the ALJ assumed *arguendo* that Complainant engaged in protected activity when Complainant sent a letter on December 27, 2016, to various government agencies,[13] alleging securities violations by his employer, Albert Fried.[14] The ALJ did not identify any other documented protected activity.[15] Regarding Respondents' knowledge of any protected activity and whether the protected activity served as a contributing factor to Complainant's termination, the ALJ determined that TD Securities was not aware of Complainant's December 27, 2016 letter, and that Complainant could not show that the letter contributed, in any

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8 *Id.* at 3.

9 *Id.*

10 *Id.* at 4-5.

11 *Id.* at 1.

12 *Id.* at 1-2.

13 The government agencies and organizations included the Department of Justice, Securities and Exchange Commission, Financial Industry Regulatory Authority, and New York State Office of the Attorney General.

14 D. & O. at 8.

15 *Id.*

way, to his termination.[16] Thus, the ALJ determined that Complainant had not established a *prima facie* case of retaliation.[17]

The ALJ also reviewed whether Respondents had met their affirmative defense burden. The ALJ noted that TD Securities had detailed its plans to terminate Complainant's employment on several occasions in its internal due diligence reports and organizational charts, evidencing that Complainant's role as a Special Situations and Merger Arbitrage Strategist did not meet the goals of the acquisition.[18] Therefore, the ALJ determined that Respondents had "shown by clear and convincing evidence [that they] would have taken the same unfavorable personnel action against Complainant in the absence of his alleged protected activity,"[19] finding that Complainant's position and the positions of ten other Albert Fried employees were eliminated as part of a legitimate business decision by TD Securities.[20]

On August 26, 2020, Complainant appealed to the Administrative Review Board (ARB or Board).[21] On appeal, Complainant contests the ALJ's decision to grant summary decision, raising a variety of objections related to protected activity, Respondents' knowledge of protected activity, and other issues.[22]

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16 *Id.* at 9.

17 *Id.*

18 *Id.* at 10.

19 *Id.*

20 *Id.*

21 On appeal, Complainant also filed a "Motion to Attach Exhibit #1 that Show Intercepting of Communications & Post Employment Retaliation to His Reply Brief" (Motion to Attach). Complainant's Motion to Attach seeks to introduce new evidence. The Board denies the Motion because the "ARB does not receive or consider evidence submitted for the first time on appeal." *Neff v. Keybank Nat'l Ass'n*, ARB No. 2019-0035, ALJ No. 2018-SOX-00013, slip op. at 3 n.2 (ARB Feb. 5, 2020). *See also Young v. City of Augusta, Ga.*, 59 F.3d 1160, 1168 (11th Cir. 1995) ("Generally, a reviewing court will not consult the evidence or record of another case if it was not first considered in the district court, although it has that power . . .Factors we have considered in deciding to grant a motion to supplement include whether the additional material would be dispositive of pending issues in the case and whether interests of justice and judicial economy would thereby be served.") (citations omitted).

22 On appeal, Complainant also argues that the ALJ erred in determining that the Respondents' Motion for Summary Decision was timely filed. We disagree and affirm the ALJ's decision on timeliness because Respondents' attorney certified that she served the Motion for Summary Decision and supporting affidavits "on the 27th day of August, 2019," which was the Scheduling Order's deadline.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board the authority to review ALJ decisions under SOX.[23] We review a summary decision de novo.[24]

DISCUSSION

1. Governing Law

SOX provides that a covered employer may not discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because the employee provides information to a supervisor "regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders . . . ."[25]

SOX is governed by the burdens of proof set out in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).[26] To prevail, a SOX complainant must establish by a preponderance of the evidence that: (1) complainant engaged in activity that SOX protects; (2) the respondent took an unfavorable personnel action against him or her; and (3) the protected activity was a contributing factor in the adverse personnel action.[27] If a complainant meets this burden of proof, the employer may avoid liability only if it proves its affirmative defense, which requires demonstrating by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.[28]

Summary decision is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a

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[23] Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

[24] *Hukman v. U.S. Airways, Inc.*, ARB No. 2018-0048, ALJ No. 2015-AIR-00003, slip op. 3 (ARB Jan. 16, 2020).

[25] 18 U.S.C. § 1514A(a)(1).

[26] 18 U.S.C. § 1514A(b)(2)(A) (citing 49 U.S.C. § 42121(b)).

[27] *See Yadav v. Frost Bank*, ARB No. 2020-0048, ALJ No. 2020-SOX-00017, slip op. at 4 (ARB June 24, 2021) (citation omitted); *see also* 29 C.F.R. § 1980.109(a); 18 U.S.C. § 1514A(b)(2)(A) (citing 49 U.S.C. § 42121(b)).

[28] 29 C.F.R. § 1980.109(b).

matter of law."[29] When reviewing an ALJ's summary decision, the Board views the allegations and evidentiary submissions in the light most favorable to the nonmoving party.[30] When the movant is "asserting an affirmative defense, the movant bears the initial burden at summary [decision] of providing competent evidence that demonstrates the absence of a genuine dispute of material fact with respect to" the affirmative defense.[31] Once the movant has met this burden, "the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for [a hearing]."[32] A "party asserting that a fact cannot be or is genuinely disputed must support the assertion" by "citing to particular parts of materials in the record," or "showing that materials cited do not establish the absence or presence of a genuine dispute."[33] Summary decision cannot be granted if there is a genuine dispute about a material fact, "genuine" meaning "if the evidence is such that a reasonable [fact finder] could [decide in favor of] the nonmoving party."[34]

2. The ALJ Properly Determined Respondents' Affirmative Defense

We find that the ALJ properly ruled as to the affirmative defense raised by Respondents. We affirm the ALJ's affirmative defense ruling because: (1) Complainant has not contested the affirmative defense ruling with clear objections, arguments, and specific supporting evidence; and (2) Respondents have demonstrated the absence of a genuine issue of material fact by presenting sufficient evidence to show that Respondents would have terminated Complainant's employment in the absence of Complainant's protected activity, and Complainant has failed to present evidence that establishes a genuine issue of material fact. Because we find the ALJ properly ruled as to the affirmative defense, we decline to address all of Complainant's objections to the D. & O in detail.[35]

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[29] 29 C.F.R. § 18.72(a).

[30] *Hukman*, ARB No. 2018-0048, slip op. at 5.

[31] *Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 79 F. Supp. 3d 60, 73 (D.D.C. 2015) (citations omitted).

[32] *Soto v. William's Truck Serv., Inc.*, No. 3:11-CV-3242-B, 2013 WL 487070, at *2 (N.D. Tex. Feb. 8, 2013) (inner quotation and citation omitted).

[33] 29 C.F.R. § 18.72(c).

[34] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

[35] Nonetheless, assuming *arguendo* that Complainant has raised a genuine issue of material fact as to protected activity, Complainant has not clearly presented evidence or arguments that dispute TD Securities' evidence that it lacked knowledge of Complainant's alleged protected activity. Alicia Schwartz, TD Securities' Human Resources Director, stated: "TD Securities' review of Albert Fried's records and systems has not turned up any evidence even remotely suggesting that any reports related to securities fraud or compliance violations were ever made by Mr. Shah." Alicia Schwartz Affidavit (Schwartz

Focusing on the critical affirmative defense issue, both procedural and substantive grounds mandate affirmance of the ALJ's decision. From a procedural perspective, it is clear that Complainant has failed to present clear objections, arguments, or supporting evidence to contest the ALJ's ruling. Under 29 C.F.R. § 1980.110, a petition for the Board's review "should identify the legal conclusions or orders to which they object, or the objections may be deemed waived."[36] The Board has noted that "[d]espite the fact that *pro se* filings are construed liberally, the Board must be able to discern cogent arguments" on appeal.[37]

In his briefs on appeal, Complainant raised numerous objections related to the D. & O., but only makes a brief assertion as to the affirmative defense, stating: "Mr. Shah provides evidence for ARB to see that TD Securities would have not taken the same unfavorable personal action in the absence of Shah's multiple protected activities."[38] This is the only direct sentence the Board can discern in the briefing addressing this topic, and Complainant cites to no specific "evidence" in the record in support of his conclusory statement. Instead, Complainant, without specific argument, broadly references material submitted before the ALJ, specifically a 92-page filing and twenty pages of another filing. Complainant fails to identify what these documents show with specificity and any supporting evidence.

Aff.) ¶12. Although his arguments lack clarity and certainty, Complainant appears to have taken inconsistent positions regarding TD Securities' knowledge. In this appeal, Complainant's brief seems to suggest that because Albert Fried's former Chief Operating Officer and Chief Compliance Officer, Anthony Katsingris, allegedly had knowledge of Complainant's protected activity, TD Securities also had knowledge of Complainant's protected activity. For example, Complainant states: "While the Complainant was observing and documenting in real-time the Securities Violations and Fraud and reporting them . . . to Mr. Katsingris this resulted in continued adverse actions in the form retaliation . . . This led to the Complainant being ultimately terminated by TD Securities on 1/3/17." Comp. Br. at 2. In contrast, in prior filings, Complainant suggested that TD Securities may *not* have had knowledge of protected activity, stating that Anthony Katsingris "may have kept TD Securities in the dark about the Securities Violations and Fraud that Albert Fried engaged in during the time they were conducting the due diligence and the sales process leading to the closing." Complainant's Response to Respondents' Undisputed Material Facts at 20, 90. Complainant did not clearly cite to any evidence that countered TD Securities' proffer that it had no knowledge of Complainant's protected activity. Therefore, Complainant cannot establish a genuine issue of material fact as to the contributing factor issue. *See Hall v. CVS Health*, ARB No. 2022-0003, ALJ No. 2020-FDA-00007, slip op. at 5 (ARB Mar. 15, 2022) (noting that knowledge about alleged protected activity "is essential for a finding of contributing factor causation.").

[36] 29 C.F.R. § 1980.110.

[37] *See Hasan v. Sargent & Lundy*, ARB No. 2005-0099, ALJ No. 2002-ERA-00032, slip op. at 8 (ARB Aug. 31, 2007) (citations omitted).

[38] Complainant's Appeal Brief (Comp. Br.) at 32.

Instead, Complainant asks the ARB to review these documents and discern why the ALJ erred in failing to consider them. This is not the appellate judge's task.[39] Complainant's conclusory assertion is insufficient to overturn the ALJ's affirmative defense ruling because the Board is unable to discern a cogent argument supporting Complainant's assertion from this one sentence and Complainant has not cited to supporting evidence with specificity. Accordingly, the Board deems Complainant's alleged error as to the affirmative defense forfeited.[40]

Substantively, a review of the record also supports affirmance of the ALJ's determination. Respondents presented sufficient evidence to the ALJ that TD Securities would have terminated Complainant's employment in the absence of any alleged protected activity. Respondents presented evidence that Complainant's role was unique and did not fit with the objectives of TD Securities' acquisition of Albert Fried. Preparing for a potential acquisition of Albert Fried, TD Securities engaged in a due diligence process to determine what assets and personnel to retain from Albert Fried. As a result, TD Securities produced a July 14, 2015 Due Diligence Report which highlighted its preliminary determination that Complainant "will not be offered employment with TD as his business function will not likely be transitioning over as part of the deal."[41]

Although the July 2015 determination was "preliminary," as the acquisition date approached TD Securities continued to memorialize its plans to terminate Complainant's employment in subsequent due diligence reports, organizational charts, and staff selection worksheets dated March 14, 2016, September 29, 2016,

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[39] *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 for them) (citation omitted); *Friend v. Valley View Cmty. Unit Sch. Dist. 365U*, 789 F.3d 707, 710-11 (7th Cir. 2015) (citations to materials without specificity are insufficient because "[w]e are not required to scour through hundreds of pages of deposition transcript in order to verify an assortment of facts, each of which could be located anywhere within the multiple depositions cited"). Nevertheless, we have extensively reviewed this submitted material in the light most favorable to Complainant, and upon review, nothing in the referenced pages changes our position.

[40] *See Dev. Res., Inc.*, ARB No. 2002-0046, slip op. at 4 (ARB Apr. 11, 2002) (citing *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001) (noting that in the Federal Courts of Appeals, it is a "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.") (citation omitted)); *see also U.S. v. Hayter Oil Co.*, 51 F.3d 1265, 1269 (6th Cir. 1995) ("[I]t is not our function to craft an appellant's arguments.") (citation omitted); *Dunkel*, 927 F.2d at 956 (stating "[a] skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review].") (citations omitted).

[41] Schwartz Aff., Ex. A at 5.

October 25, 2016, and November 21, 2016.[42] David Santina, TD Securities' Managing Director of Sales and Trading, highlighted the core businesses and services TD Services was seeking to acquire, including "prime brokerage, securities lending, prime brokerage technology platform."[43] Complainant's role did not fit TD Securities' acquisition goals because Complainant was in a "highly specialized" role as the only Albert Fried employee conducting merger arbitrage analysis, which was "distinct from Albert Fried's core businesses."[44] Complainant was not "even involved in one of the ancillary businesses/service (e.g., Direct Market Access ("DMA") offering, NYSE Floor trading operations, institutional equity execution, etc.) that TD Securities had identified as complimentary [sic] to the core businesses/services" that TD Securities was seeking to acquire.[45] TD Securities had "expect[ed] there to be a fair amount of non-key employee attrition"[46] and, consistent with that expectation, it eventually decided to terminate Complainant's employment and the employment of ten other Albert Fried employees.[47]

Relying on this extensive record, the ALJ noted that there "is ample evidence of the background work TD Securities engaged in when it decided to acquire the assets of Albert Fried," including due diligence reports seeking "to ensure the appropriate business assets and employees would be part of the acquisition."[48] Based on the submissions of evidence, the ALJ determined that Respondents had "shown by clear and convincing evidence [that they] would have taken the same unfavorable personnel action against Complainant in the absence of his alleged protected activity."[49] Complainant and ten other Albert Fried employees "were being eliminated as part of the acquisition process by TD Securities, a legitimate business decision."[50] We agree that Respondents met their affirmative defense burden.

In contrast, Complainant improperly presents his evidence contesting the affirmative defense, broadly referencing materials without specific citations or explanations for how the documents support his argument. As discussed above, Complainant has procedurally forfeited his alleged errors against the affirmative

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42 D. & O. at 4. The D. & O. refers to October 15, 2016, for one of the organizational charts, but the proper date is October 25, 2016. See Schwartz Aff., Ex. F.

43 David Santina Affidavit (Santina Aff.) ¶3, 5.

44 Santina Aff. ¶8.

45 Santina Aff. ¶7.

46 Schwartz Aff., Ex. A at 1.

47 Santina Aff. ¶8.

48 D. & O. at 10.

49 *Id.*

50 *Id.*

defense. Nevertheless, we have extensively reviewed the material in the light most favorable to Complainant, and we find Complainant does not present a genuine issue of material fact.

The Board discerns two arguments from Complainant's referenced materials related to the affirmative defense, construing them as follows.[51] First, Complainant argued that his role as a Special Situations and Merger Arbitrage Strategist was a core or complementary business at TD Securities because TD Securities had staff that specialized in merger arbitrage.[52] Complainant's evidence illustrates that merger arbitrage already existed as a business function at TD Securities. However, in support of the affirmative defense, Respondents presented evidence of the core and complementary businesses that TD Securities was seeking to acquire, and merger arbitrage was not among them. Complainant's evidence, at best, shows that TD Securities had an existing merger arbitrage business, but he did not present evidence or arguments regarding whether merger arbitrage was a business that TD Securities was seeking to acquire. Thus, Complainant fails to raise a genuine issue of material fact on the issue of what business functions Respondent was seeking to acquire through the Albert Fried acquisition.

Second, similar to the first argument, Complainant argued to the ALJ that his role was complementary to the businesses that TD Securities was seeking to acquire.[53] However, to make this argument, Complainant had to pivot to suggest that his job functions were something other than, or broader than, researching and handling special situations and merger arbitrage strategy. His evidence consisted of a severance chart where TD Securities labeled Complainant as being on the team of "Institutional Sales & Trading" with the title of "Institutional Sales."[54] Complainant asserted that these team and title labels were for businesses complementary to TD Securities' acquisition goals.[55] Complainant also claimed that TD Securities retained four other employees who had these same team and title labels. Complainant suggested that because TD Securities listed Complainant with the same team and title labels, Complainant was in a complementary role to TD Securities' acquisition goals. Therefore, Complainant argued that TD Securities terminated Complainant's employment because of his protected activity, not due to his role being outside the scope of the acquisition.[56]

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51 To the extent Complainant raises different arguments, they are indiscernible because he does not clearly present them.

52 Complainant's Response to Respondents' Undisputed Material Facts at 14.

53 *Id.* at 89.

54 *Id.*

55 *Id.*

56 *Id.*

Complainant's argument fails because it is an undisputed material fact that Complainant's role was as a Special Situations and Merger Arbitrage Strategist. In fact, Complainant repeatedly acknowledges his role was as a Special Situations and Merger Arbitrage Strategist. In Complainant's first argument contesting the affirmative defense, considered above, Complainant claimed his merger arbitrage role was core or complementary to TD Securities. Complainant also refers to himself as a Special Situations and Merger Arbitrage Strategist on appeal.[57] Even though TD Securities vaguely listed Complainant under a different title on a chart, and even if Complainant was part of an institutional sales team, it is undisputed that Complainant's actual role was as a Special Situations and Merger Arbitrage Strategist and that merger arbitrage was not among the core or complementary roles that TD Securities was seeking to acquire.[58]

Upon consideration of the parties' briefs on appeal, and having thoroughly reviewed the evidentiary record, we agree with the ALJ's affirmative defense ruling.[59] Respondents demonstrated that there is no genuine issue of material fact by presenting evidence in support of their affirmative defense that TD Securities would have terminated Complainant in the absence of protected activity. In contrast, Complainant failed to present evidence establishing a genuine issue of material fact. Accordingly, we affirm the D. & O.

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[57] *E.g.*, Comp. Br. at 2.

[58] To overcome the grant of summary decision, Complainant must produce evidence that raises a genuine dispute about a material fact. "[G]enuine" meaning "if the evidence is such that a reasonable [fact finder] could [decide in favor of] the nonmoving party." *Liberty Lobby, Inc.*, 477 U.S. at 248. Complainant's evidence of a chart labeling him as part of an institutional sales team does not create a genuine dispute as to his job position and role at Albert Fried such that a reasonable fact finder could decide in his favor.

[59] Complainant has also raised other objections unrelated to the D. & O. Complainant argues that the ALJ failed to address his Motion for TRO/Injunction and Motion for Delay of Hearing. The record reveals that the ALJ denied the motions as moot in a July 13, 2020 Order. Complainant has failed to establish that the ALJ's rulings on Complainant's motions were improper. Thus, we affirm the ALJ's rulings.

CONCLUSION

For the foregoing reasons, the ALJ's D. & O. is **AFFIRMED**, and the complaint is **DISMISSED**.

SO ORDERED.[60]

SUSAN HARTHILL
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge

TAMMY L. PUST
Administrative Appeals Judge

[60] In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.