

OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, DC 20540-1999

VIATEUR COMMERE)
)
 Complainant,)
)
 v.)
)
 OFFICE OF THE ARCHITECT)
 OF THE CAPITOL)
)
 Respondent.)

Case No. 02-AC-30 (DA, RP)
Date: August 11, 2003

Before the Board of Directors: Susan S. Robfogel, Chair; Barbara L. Camens, Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

DECISION OF THE BOARD OF DIRECTORS

On February 6, 2003, Hearing Office Curtis E. von Kann issued the attached Order dismissing this disability discrimination and reprisal complaint on the basis that it was untimely and, therefore, he was without jurisdiction to entertain the matter. The Complainant timely filed a petition for review of the Hearing Officer's decision and a supporting brief. The Respondent employing office filed a brief in opposition to the petition for review.

Upon due consideration of the Hearing Officer's Order, and the parties' filings, the Board has decided to affirm the dismissal Order but for the reasons explained below.

Complainant alleges herein that he did not prevail in earlier companion discrimination lawsuits (*circa* 1999-2001) against the Respondent because the Respondent had discriminatorily misrepresented important facts and law to both the federal trial and appellate courts. Complainant, in essence, is seeking the relief he would have received had he succeeded before those courts.

The Hearing Officer concluded that he lacked jurisdiction to entertain the complaint because the Complainant had not complied with the 180-day time limitation imposed by Section 402(a) of the Congressional Accountability Act, 2 *U.S.C. § 1402(a)*. Contrary to the Hearing Officer, we note that the 180-day time limitation is in the nature of a statute of limitations rather than a jurisdictional requirement. Accordingly, it is subject to equitable tolling, but only in

extraordinary and carefully circumscribed instances. *See, Clarence Seay, Jr. v. Tennessee Valley Authority, et al.*, 2003 U.S. App. LEXIS 16022 (6th Cir. 08/06/2003); *Monday v. Secretary of the Army*, 845 F.2d 1051, 1057 (D.C. Cir. 1988); *Charles A. Hughes, III v. The Office of the United States Sergeant-at-Arms*, Office of Compliance Case No. 98-SN-56 (RP) (September 8, 1999); *Kenneth F. Thompson v. The Capitol Police Board*, 120 F. Supp. 2d 78 (2000); *Gloria Halcomb v. Office of Senate Sergeant-at-Arms*, 209 F. Supp.2d 175 (2002).

However, we do not decide whether the Complaint was timely filed, as we hold that the Complaint does not state a cause of action under the Act as a matter of law. The Hearing Officer explicitly declined to rule whether Respondent's aforementioned alleged misrepresentations before the courts could be held to constitute new and independent acts of discrimination and retaliation against the Complainant. Subsequent to the Hearing Officer's decision and in the context of another case, the Board applied the preclusive legal doctrines of *res judicata* and *collateral estoppel* to bar consideration of an independent retaliation complaint predicated upon a party's litigating tactics in an earlier case before the Office of Compliance. *See Ziggy Bajbor v. Office of the Architect of the Capitol*, Case No. 01-AC-377 (RP) (May 30, 2003). We believe that doctrine is fully applicable to this case. As we held in *Bajbor*, a party must deal with its opponent's litigation actions before that very tribunal hearing the substantive claims. The doctrines of *res judicata* and *collateral estoppel* preclude a party from collaterally challenging that tribunal's judgment by bringing a new action before the Office of Compliance. The Office simply will not entertain such complaints.

For the foregoing reasons, the Hearing Officer's Order dismissing the complaint is **affirmed**.

It is so ordered.

Issued: at Washington, D.C., August 11, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2003, I delivered a copy of this Decision of the Board of Directors to the following parties by the identified means:

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