Legal Update Article

Retaliation Plaintiff Not a Covered Whistleblower under Plain Reading of Dodd-Frank Act, Court Rules

By Richard J. Cino & Joseph C. Toris

May 4, 2018

Meet the Authors

Richard J. Cino
Principal
908-795-5131
Richard.Cino@jacksonlewis.com

Joseph C. Toris
KM Attorney
908-795-5220
Joseph.Toris@jacksonlewis.com

Related Services

Corporate Governance and Investigations
Financial Services
Insurance

A former employee who failed to show he reported alleged securities law violations to the Securities and Exchange Commission (SEC), as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), cannot claim his former employer unlawfully retaliated against him, federal Judge William J. Martini has ruled. *Price v. UBS Financial Services, Inc.,* No. 2:17-01882 (D. N.J. Apr. 19, 2018).

The plaintiff was not a whistleblower protected by the DFA, the court concluded, despite his having testified before the Financial Industry Regulatory Authority (FINRA), which is overseen by the SEC. The U.S. Supreme Court in *Digital Realty Trust, Inc. v. Somers* held that a protected DFA "whistleblower" includes only individuals who had provided information to the SEC. Accordingly, the District Court dismissed the DFA whistleblower retaliation claim, with prejudice.

Price marks the latest rejection of a creative plaintiff's attempt to pigeonhole claims not involving the SEC into the DFA.

Background

Craig Price, a former wealth adviser for UBS, alleged UBS undermined his work efforts in order to terminate him in retaliation for testimony he gave to FINRA concerning the unlawful activities of a colleague. Price filed a complaint against his former employer alleging violations of the DFA and a state whistleblower act.

Judge Martini denied the employer's motion to dismiss with respect to the state whistleblower act, but stayed the motion to dismiss the plaintiff's DFA claim pending resolution of *Digital Realty* by the Supreme Court.

On February 21, 2018, the Supreme Court in *Digital Realty* held a plaintiff must have provided information to the SEC in order to meet the plain reading of the statutory definition of a "whistleblower" under the DFA.

Price then opposed the defendant's motion to dismiss, arguing he qualified as a whistleblower under the DFA because the SEC oversees FINRA, including FINRA's rulemaking process and disciplinary proceedings. Therefore, Price argued, it was inappropriate to dismiss his DFA whistleblower claim because FINRA acts with the authority of the SEC.

Tell the SEC

Judge Martini concluded the Supreme Court's holding in *Digital Realty* was "unequivocal": a DFA whistleblower had to provide information regarding securities law violations to the SEC. This is supported by the objective of the DFA whistleblower program to "motivate people who know of securities law violations to *tell the SEC.*"

The court noted, “Plaintiff had ample time between when he first learned of the violations and his termination to report the misconduct to the SEC, but he chose not to.” Therefore, Judge Martini found Price did not qualify as a DFA whistleblower and, accordingly, dismissed his DFA claim.

***

The Supreme Court’s decision in *Digital Realty* resolved a long-standing split among federal courts as to whether individuals who had only reported matters internally, and not to the SEC, qualified for whistleblower protection. The narrow reading of the “whistleblower” definition adopted by the Court reflected the minority view on the issue. *Price* is one of the latest examples of a district court following the Supreme Court’s lead and declining to expand the whistleblower definition beyond the plain language of the DFA.

Please contact a Jackson Lewis attorney if you have any questions about this case or other legal developments.