

Internal Complaint Qualifies Under Dodd-Frank Whistleblower Protection, SDNY Rules

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The United States District Court for the Southern District of New York (“SDNY”) recently issued another pro-whistleblower decision, this time [rejecting a motion to dismiss](#) a whistleblower retaliation lawsuit brought under the Dodd-Frank Act in the case of *Murray v. UBS Securities, LLC*. In *Murray*, the SDNY agreed with the four other district courts that have addressed this issue by ruling that the [Securities Whistleblower Incentives and Protection](#) provisions of the Dodd-Frank Act protect whistleblowers from retaliation for reporting suspected securities violations internally as well as reporting directly to the Securities and Exchange Commission (“SEC”). The SDNY also recently joined a growing number of courts across the country in liberalizing the requirements for a whistleblower’s communications to constitute “protected activity” under the Sarbanes-Oxley Act of 2002 (“SOX”).

The case was brought by Trevor Murray, formerly employed by UBS as a Senior Commercial Mortgage-Backed Security Strategist. Murray was responsible for performing research and creating reports about UBS’s CMBS products that were distributed to UBS’s current and potential clients. According to Murray’s complaint, toward the end of 2011 UBS engaged in a “concerted, extended effort” to “influence [him] to skew his published research in ways designed to support UBS Securities’ ongoing CMBS trading and loan origination activities.” After repeatedly complaining to his supervisors at UBS about the pressure he was receiving, Murray’s manager responded by telling him to write “what the business line wanted,” irrespective of the resources available. Less than a month later, Murray was fired.

UBS argued that while the Dodd-Frank Act states explicitly that it [protects “whistleblowers” from retaliation](#) for making disclosures that are protected under SOX – which offers protection for retaliation for internal reports of securities violations – it also defines “whistleblower” in the statute as “any individual who provides . . . information relating to a violation of the securities laws to the [SEC].” This creates an inherent ambiguity in the statutory language. However, the SEC addressed this ambiguity on August 12, 2011, when it promulgated a final rule regarding the relationship between the anti-retaliation provision and the provision defining “whistleblower.” Specifically, the SEC stated that “you are a whistleblower if . . . you provide [information relating to a possible securities law violation] in a manner described in Section 21F(h)(1)(A) of the Exchange Act,” which includes providing information to “a person with supervisory authority over the employer (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).”

Finding the SEC’s interpretation of the statute to be a reasonable interpretation of an ambiguous statutory provision, the SDNY elected to grant *Chevron* deference to the agency and adopted the SEC interpretation. Specifically, the Court wrote that “because the SEC’s rule clarifies an ambiguous statutory scheme the SEC was charged with enforcing and reflects the considerable experience and expertise that the agency has acquired over time with respect to interpretation and enforcement of the securities laws, this Court defers to the SEC’s interpretation.” Finding that Murray had undoubtedly alleged that UBS’s decision to terminate him was motivated, in part, by his making disclosures that are protected by SOX, the Court rejected UBS’s motion to dismiss and allowed the case to proceed.