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2nd Circ. Reopens Whistleblower's Suit Against JPMorgan

By **Jessica Corso**

Law360, New York (October 09, 2014, 5:38 PM ET) -- A recent Second Circuit decision setting out the standard for bringing a Sarbanes-Oxley Act whistleblower suit means that JPMorgan Chase & Co. cannot escape a former worker's retaliation claims, the court ruled Thursday.

The district court should determine whether Jennifer Sharkey reasonably believed that the client she flagged for potential fraud activities was violating federal law, the Second Circuit ruled, because U.S. District Judge Robert W. Sweet applied an old standard in **granting summary judgment** to JPMorgan in the suit.

"[T]he district court required Sharkey to show that her complaints 'definitively and specifically' related to one of the six enumerated categories of misconduct identified," the Second Circuit said. "In the time since the district court issued its opinion, we have discarded this standard as too strict."

In the suit, Sharkey, a former vice president of the bank, alleged she was fired after flagging an Israeli client involved in the gem trading and prepaid phone card businesses for transferring money to Colombia. Sharkey claimed that the transfer was suspicious enough to raise questions of fraud under Sarbanes-Oxley.

But JPMorgan contended, **in a brief** filed with the Second Circuit two weeks ago, that even replacing the "definitively and specifically" standard with a "reasonably plausible" one still defeats the suit because Sharkey never reasonably believed that the client was in violation of the SOX Act.

"Here, as the district court found, appellant relies on statutes not enumerated in SOX. Also, appellant cannot articulate a fraudulent scheme, including the nature of the fraud or even who was being defrauded," JPMorgan argued.

But the Second Circuit ruled in a one-page order today that that was the issue for the district court to take up, as the new standards set out in an August ruling in favor of AECOM Technology Corp. invalidated the district judge's opinion in the JPMorgan suit.

That opinion was handed down before **the Second Circuit adopted the new standards**.

The Second Circuit's AECOM ruling came **years after** the U.S. Department of Labor ruled that the "definitively and specifically" standard was "often applied too strictly," changing the way SOX Act whistleblower claims are prosecuted in front of that agency's Administrative Review Board. It was a sentiment echoed in the Second Circuit's order on Thursday.

Even if the district court decides that it was reasonable for Sharkey to believe that she had flagged a potential SOX violation, it would still have to take up the matter of whether her

protected activity caused her to be fired.

"Should the district court conclude that Sharkey engaged in any identifiable protected activity under the more lenient ... standard, it should reassess, in the context of this finding, whether the identified protected activity 'was a contributing factor in the unfavorable action,'" the court ruled.

"We are pleased with the outcome and are hopeful that Ms. Sharkey will finally get her day in court in front of a jury," attorney Lawrence Pearson of Wigdor LLP told Law360 on Thursday.

Representatives for JPMorgan declined to comment on Thursday.

Judges Rosemary S. Pooler, Reena Raggi and Peter W. Hall sat on the panel for the Second Circuit.

Sharkey is represented by Douglas Wigdor, Lawrence Pearson and Michael Willemin of Wigdor LLP.

The defendants are represented by Michael D. Schissel of Arnold & Porter LLP.

The case is Sharkey v. JPMorgan Chase & Co., case number 13-4741, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Ben James. Editing by Philip Shea.
