Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Revived SOX Whistleblower Case Back In JPMorgan's Sights

By **Ben James**

Law360, New York (December 23, 2014, 6:01 PM ET) -- A New York federal court had correctly tossed an ex-employee's Sarbanes-Oxley Act whistleblower claim that was later revived by the Second Circuit, JPMorgan Chase & Co. said Monday, arguing that the appeals court's decision clarifying the law in a separate case shouldn't change the outcome.

The financial giant and three individual defendants took aim at former JPMorgan private wealth manager Jennifer Sharkey's whistleblower case in a renewed motion for summary judgment filed with the lower court. JPMorgan claims the Second Circuit's **Nielsen v. AECOM ruling** in August didn't change the conclusions behind the company's **December 2013 summary judgment win**.

The first time around, the trial court had required Sharkey, who said she had been fired for raising concerns about potential fraud, to show her complaints "definitively and specifically" related to one of the six categories of misconduct listed in SOX's Section 806.

But the Second Circuit said that standard was too strict. The Second Circuit cited its conclusion in AECOM that SOX's whistleblower protections cover disclosures from employees regarding any conduct that they reasonably believe amounts to a violation enumerated in Section 806, which include mail fraud and wire fraud.

But just because the law was clarified and the previous **summary judgment grant was vacated** doesn't mean Sharkey's SOX claim holds water, JPMorgan said.

"As the court previously found, plaintiff relies on the Patriot Act and the money laundering statute, neither of which is enumerated in SOX, and plaintiff has never articulated a fraudulent scheme. Those facts have not changed, and therefore plaintiff cannot demonstrate a 'reasonable belief' regardless of which standard is applied," the defendants argued in a memorandum supporting their summary judgment bid.

The company said the prior district court decision in its favor was based on three separate grounds: Sharkey didn't reasonably believe an unnamed JPMorgan client was violating a SOX-enumerated statute, her alleged protected activity didn't contribute to her termination, and she would have been fired anyway for dishonesty and performance issues.

"A finding in favor of defendants on any of those grounds results in dismissal of plaintiff's claim; this court dismissed on all three," JPMorgan said.

In the suit, Sharkey, a former vice president at 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 the transfer was suspicious enough to raise questions of fraud under SOX.

The Second Circuit's AECOM ruling came after the Sharkey appeal had been briefed. The U.S. Department of Labor's Administrative Review Board **ruled in 2011** that the "definitively and specifically" standard had “evolved into an inappropriate test and is often applied too strictly.”

Wigdor LLP's Lawrence Pearson, an attorney for Sharkey, pointed out that the Second Circuit had chosen not to affirm summary judgment under the protected activity standard endorsed in the AECOM case.

“In short, we are confident that the record contained many clear disputes on termination-related issues and the district court will find summary judgment inappropriate,” he said Tuesday.

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

JPMorgan is represented in this matter by Michael Schissel of Arnold & Porter LLP.

The case is Sharkey v. JPMorgan Chase & Co. et al., case number 1:10-cv-03824, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jennifer Corso. Editing by Kat Laskowski.