

JPMorgan Whistleblower Suit Revived Again By 2nd Circ.

Law360, Los Angeles (September 12, 2016, 5:15 PM ET) -- The Second Circuit on Monday revived former JPMorgan Chase & Co. wealth management pro Jennifer Sharkey's whistleblower retaliation suit against the megabank for the second time, holding that whether Sharkey was terminated for legitimate reasons is a factual question to be settled at trial.

In a non-precedential six-page order, the three-judge appellate panel reversed U.S. District Judge Robert W. Sweet's ruling dismissing the Sarbanes-Oxley Act damages suit on summary judgment, finding that there was still a factual dispute in the case between Sharkey and JPMorgan as to why she was terminated.

The panel noted that Sharkey was terminated roughly one week after recommending to her superiors that the bank end its relationship with a client she had been suggesting was engaging in illegal activity. JPMorgan had argued Sharkey was fired instead for lying to her former boss Leslie Lassiter about communicating with a different client, but the panel said that Sharkey disputes that she did lie, and said that without knowing the facts underlying that incident, the court could not decide whether or not JPMorgan had legitimate reasons to terminate her.

"The district court acknowledged that whether Sharkey actually lied to Lassiter was an issue that remained 'factually disputed between the parties,'" the panel wrote. "Resolution of that question could, in turn, inform a determination of whether defendants reasonably believed that Sharkey had lied."

Sharkey's attorney, Lawrence Pearson of Wigdor LLP, told Law360 on Monday that his client and her legal team are "very pleased" with the decision, and are looking forward to heading to trial.

JPMorgan spokesman Darin Oduyoye told Law360 on Monday that the company continues to "believe this case is without merit," and is looking forward to making its case to the court.

Sharkey filed suit in New York federal court in 2010, alleging that she was fired for informing her superiors about a client's allegedly unlawful activities, which may have included mail fraud, bank fraud and money laundering. According to an amended complaint filed in February 2011, Sharkey served as a vice president in JPMorgan's wealth management group between October 2006 and August 2009, working with more than 75 high net worth clients.

The complaint said Sharkey raised concerns to her supervisors about an unnamed client who had previously been accused of fraud by Merrill Lynch. Less than a week after recommending that JPMorgan cut ties with the client, Sharkey was fired, she said.

Judge Sweet had granted JPMorgan summary judgment and tossed the suit in December 2013, but the Second Circuit **reinstated the claims** in October 2014 after loosening the legal standard in such cases. Under the new standard, an employee must show that he or she blew the whistle on conduct "reasonably believed" to have violated a specific federal law mentioned in the Sarbanes-Oxley Act.

In October 2015, Judge Sweet **dismissed the suit** again, ruling that Sharkey's termination was "very close" to the incident where Sharkey allegedly lied about being in touch with another client,

and her bosses were justified in terminating her based on that incident.

During oral arguments earlier this month, however, Second Circuit Judges Reena Raggi and Denny Chin raised doubts about the ruling, saying repeatedly during the arguments that the case did not seem ripe for resolution at the summary judgment phase.

On Monday, the full panel stuck with that reasoning, vacating the summary judgment order and reviving the suit.

Circuit Judge Reena Raggi, Denny Chin and Christopher F. Droney sat on the panel that issued Monday's order.

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

JPMorgan and the individual defendants are represented by Michael Schissel of Arnold & Porter LLP.

The case is Sharkey v. JPMorgan et al., case number 15-3400, in the U.S. Court of Appeals for the Second Circuit.

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