# CA Federal Court Dismisses Whistleblower Claims After Bench Trial

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On July 26, 2021, the United States District Court for the Northern District of California held, after a bench trial, that Plaintiff Botta failed to prove that Defendant PricewaterhouseCoopers LLP ("PwC") terminated his employment in retaliation for his filing of a complaint with the SEC, and dismissed his whistleblower claims brought under SOX and California law. *Botta v. PricewaterhouseCoopers LLP*, No. 18-cv-02615.

**Background**

Plaintiff was an auditor at PwC for nearly two decades. In 2016, he filed a whistleblower complaint with the SEC, alleging that PwC supervisors willingly overlooked accounting errors and internal-control deficiencies in order to retain business. The SEC investigated, but chose not to take action against PwC.

In August 2017, PwC terminated Plaintiff's employment. Plaintiff claimed the termination, as well as certain other employment actions, were taken in retaliation for his complaint to the SEC. Plaintiff subsequently sued PwC, alleging violations of SOX, supplemental whistleblower claims under California law, and breach of his employment contract. The court held a bench trial using Zoom.

**Ruling**

In its Findings of Fact and Conclusions of Law, the court ruled that PwC was justified in terminating Plaintiff's employment, and that Plaintiff had not established that PwC retaliated against him.  Although Plaintiff focused on the timing of his termination (four months after the SEC opened an investigation into his whistleblower complaint), the court held that the temporal proximity "wasn't bolstered by other evidence," and PwC had "offered a different, persuasive side of the story."  PwC asserted at trial that Plaintiff's employment had been terminated because he "fabricated an internal control or lied about doing so," which was a violation of PwC internal standards.  The court ultimately found that "[Plaintiff], in the end, simply didn't put forward enough evidence to prove that his SEC complaint contributed to PwC's decision to fire him.  The temporal proximity between his complaint and his termination generated suspicion, but at trial that suspicion wasn't confirmed."  PwC representatives also testified persuasively that they had not even known Plaintiff had filed a whistleblower complaint.

The court also found that Plaintiff was removed from other client engagements for legitimate reasons, including his "lack of rapport," "bedside manner," and lack of "sensitivity."  Therefore, the court held that Plaintiff had not proven that his protected activity was a "contributing factor" to the adverse actions taken against him.  For the same reasons, Plaintiff had not established a causal link between his protected activity and any adverse employment action as required under California law.

**Implications**

This case demonstrates that temporal proximity between a whistleblower complaint and an adverse employment action likely will not, standing alone, establish retaliation. Instead, the factfinder considers all of the evidence and makes a context-specific determination regarding whether an adverse employment action was motivated by retaliatory animus.

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