

Third Circuit Affirms Dismissal of Untimely SOX Whistleblower Claims

Proskauer Whistleblower Defense on **February 15, 2023**

On January 4, the Third Circuit affirmed the dismissal of a former bank executive's whistleblower retaliation claims, holding that two procedural errors doomed his case: he sued before exhausting his administrative remedies; and then he belatedly filed an administrative complaint after the statute of limitations had run. [Jaludi v. Citigroup](#), No. 21-cv-1108.

Background

Plaintiff alleged that he was demoted, transferred and ultimately discharged after he reported alleged wrongdoing. He also alleged that he was then "blacklisted" from the financial industry.

In 2015, Plaintiff filed suit in the U.S. District Court for the Middle District of Pennsylvania alleging various claims, including unlawful retaliation under SOX's anti-retaliation provision. The district court initially granted the bank's motion to compel arbitration, but in 2019, the Third Circuit [reversed](#), holding that the Dodd-Frank Act amended SOX to prohibit pre-dispute agreements requiring arbitration of SOX whistleblower claims. On remand, the district court dismissed the SOX claim as untimely because Plaintiff waited more than two years after the last incident of alleged retaliation to file an administrative complaint with OSHA—long after the 180-day deadline.

Ruling

On appeal, the Third Circuit affirmed. The court first held—after analyzing the statute's plain language and applying basic rules of statutory construction—that SOX's statute of limitations and exhaustion requirements are not jurisdictional. The court therefore determined that it could proceed to the merits. The court then concluded that Plaintiff's SOX claims were time-barred because he failed to exhaust administrative remedies before filing suit in court, and only filed his administrative complaint after the 180-day statute of limitations had expired. The court also rejected Plaintiff's request for leave to amend, ruling that any amendment would be futile.

Implications

This decision serves as a reminder that courts will strictly construe the 180-day statute of limitations applicable to SOX whistleblower claims.

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