

Consumer Financial Protection Whistleblower Prevails at DOL

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On February 6, 2019, the U.S. Department of Labor ordered Hermitage Club Realty LLC (Hermitage), a real estate company based in Vermont, to provide relief to a former employee who was fired for blowing the whistle on what he reasonably believed were illegal real estate referral fees.

OSHA investigated the whistleblower's CFPA retaliation complaint and found reasonable cause to believe that Hermitage fired him in retaliation for his CFPA protected whistleblowing. The CFPA protects disclosures made to an employer, to the Consumer Financial Protection Bureau or any State, local, or Federal, government authority or law enforcement agency concerning any act or omission that the employee reasonably believes to be a violation of any CFPB regulation or any other consumer financial protection law that the Bureau enforces. This includes several federal laws regulating "unfair, deceptive, or abusive practices . . . related to the provision of consumer financial products or services."

The [Real Estate Settlements and Procedures Act](#) (RESPA) prohibits the payment of a referral fee or kickback in exchange for a referral incident to or part of a settlement service involving a federally-related mortgage loan. Accordingly, disclosures concerning RESPA-prohibited referral fees are protected under the CFPA.

Where OSHA has reasonable cause to believe that a CFPA retaliation complaint has merit, OSHA can order the employer to reinstate the employee and pay back pay (lost wages) with interest, compensatory damages, and attorney fees. Hermitage was ordered to pay the whistleblower \$22,693 in back pay and bonuses with interest, and \$20,000 in compensatory damages. In addition, OSHA ordered Hermitage to 1) expunge from the whistleblowers' personnel file any references to his exercising his CFPA rights; 2) not retaliate or discriminate against the complainant; and 3) post a notice of OSHA's findings in a conspicuous place in or about its facility.

Under the regulations implementing the CFPA whistleblower protection law, Hermitage can appeal OSHA's order by requesting a hearing before a DOL Administrative Law Judge.

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