Federal Court Mandates Agency Review Whistleblower Claim Denial

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- Securities & SEC
- Litigation / Trial Practice
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- 2nd Circuit (incl. bankruptcy)

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On May 12, U.S. Second Circuit Appeals Court issued the pivotal decision to require the Department of Justice (“DOJ”) and Securities and Exchange Commission (“SEC”) to review their denial of a whistleblower claim. The claim, brought by whistleblower Victor Hong, came after an investigation into the Royal Bank of Scotland (“RBS”), which resulted in a nearly $5 billion settlement with the SEC and DOJ. Hong sought a claim on the basis that he assisted the federal investigations into the bank’s sale of mispriced mortgage bonds – participating in the 2007-2008 financial crisis. However, rather than denying Mr. Hong’s contributions to the successful sanction, the agencies deemed the RBS recovery ineligible for a whistleblower award.

Mr. Hong appealed the agencies’ decisions on the grounds that the DOJ and SEC ignored the law when they denied his whistleblower award claim and demanded that the agencies disclose all documentation related to the investigation and the agencies’ grounds for deeming the RBS settlement ineligible for a whistleblower award. The Second Circuit decision to compel these agencies to review their denial of Mr. Hong’s claim is significant and sets a powerful precedent for whistleblowers who participate in federal investigations. Further, the resulting review by the agencies will result in incredibly useful clarification and insight into the determination of award eligibility when whistleblowers have participated in a successful investigation.
Awards by the SEC to whistleblowers who provide original information that contributes to a successful sanction are eligible for awards ranging from 10-30 percent. This percentage also applies to other enforcement agencies’ actions when the same information provided by the whistleblower supports those actions. In this case, Mr. Hong provided information to both the SEC and the DOJ. The SEC initially denied Mr. Hong’s claims stating the successful DOJ action he assisted in did not qualify. The agency did not adequately explain its reasoning for categorizing the DOJ action as ineligible, and therefore the Second Circuit has required review.

If successful, Mr. Hong would be entitled to at least $490 million. The SEC rules for whistleblowers are complicated, and legal representation is essential to effectively navigating the agency’s highly technical rules to obtain the largest possible award.

Read about the decision at Reuters

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