



Workplace Whistleblower

Federal Reserve Bank Ruled a Federal Supervisory Agency Under the BSA

By Cliff Fonstein and Meredith-Anne Berger

In a case of first impression, a district court held that a regional Federal Reserve Bank was a supervisory agent as defined by the Bank Secrecy Act (“BSA”). The BSA requires the reporting of any suspicious activity that may constitute a violation of tax, anti-money laundering, and other laws and contains expansive whistleblower protections. The law prohibits discrimination or retaliation against employees that provide information to the “Secretary of the Treasury, the Attorney General, or any Federal Supervisory agency regarding a possible violation” of the BSA.

In *Taft v. Agricultural Bank of China, Ltd.*, Judge Paul A. Engelmayer in the Southern District of New York ruled that a compliance officer at the Agricultural Bank of China (“ABC”) could bring a claim for retaliation under the whistleblower protections contained in the Bank Secrecy Act. The court agreed with the plaintiff, Natasha Taft, that a memorandum she wrote to the Federal Reserve Bank of New York (“FRBNY”) against ABC constituted an independent report and not one made on behalf of ABC in her capacity as a compliance officer. Notably, the court also held the FRBNY was an appropriate agency to report such allegations to, even though “federal supervisory agency” is not defined in the BSA.

Taft alleged that ABC violated the BSA’s “Travel Rule” by failing to properly label transactions, so as to purportedly “hide information regarding the transmitter and recipient.” When Taft brought these concerns to ABC, her boss and the CFO allegedly told her “there were no issues” with any of the supposedly improper transactions. According to her complaint, Taft notified her superiors that she had an obligation to report her findings to regulators and would do so, regardless of ABC’s consent or not. She then allegedly raised her concerns over the telephone with the Federal Reserve Bank of New York (“FRBNY”), which requested a memorandum detailing her specific concerns. After getting wind of this call, ABC supposedly prohibited its employees from speaking with regulators without Taft’s boss or the CFO present. Taft then sent a memo to the FRBNY in which she expressed “concerns” and sought “guidance” with respect to the suspect transactions. As a result of the communications between her and the FRBNY, Taft alleges that ABC’s management retaliated against her by transferring her job responsibilities to those with no compliance experience, disparaging her, pressuring her to terminate employees, refusing to approve her decisions on critical matters, and requiring her to

report to the CFO, which allegedly impeded her ability to do her job.

Taft filed two amended complaints for claims of gender discrimination and whistleblower retaliation, in which the whistleblower claims were dismissed with leave to amend. Ultimately, Taft's second amended complaint proved successful. The court found that Taft's second amended complaint "pled with particularity the manner in which ABC resisted, opposed, and undermined Taft's effort to investigate and report on her concerns . . ." The court found that Taft pled sufficient facts to show she acted independently of the bank in that ABC engaged in a "concerted effort" to stop Taft from raising her concerns. Further, Taft's "ultimatum" that she would report her concerns with or without ABC's support, indicate that Taft "was the driving force behind the report to the FRBNY." In addition, the court found that taking together the phone call and the letter from the FRBNY, it is plausible that Taft provided information suggesting that ABC was hiding information it did receive, which would potentially violate the Travel Rule of the BSA, noting "a possible violation is all that is required to state a claim."

Significantly, ABC argued that Taft provided information to the wrong entity, i.e., that the regional Federal Reserve office was not a federal supervisory agency under the statute. The BSA's whistleblower protection protects those who report information to, *inter alia*, a federal supervisory agency, which is not defined in the statute. The court held, however, that as a federal banking agency, the FRBNY is clearly a federal supervisory agency. Judge Engelmayer analogized the holding to decisions in the Southern District of New York and elsewhere which held that offices under an umbrella agency or organization should be appropriate reporting agencies under various other whistleblower statutes.

Thus, the court found the BSA whistleblower protection extends to reports of possible violations to all Federal Reserve Banks, not just the Federal Reserve Board itself, since the Board may delegate any of its authorities to the Banks of the Federal Reserve, noting "ABC has cited no case law requiring potential whistleblowers to leapfrog so far up the food chain." Moreover, the Treasury Department itself refers banks with BSA-related questions to the bank's "primary examination authority," of which the FRBNY would qualify for ABC. This ruling clarifies a potential ambiguity in the statute, and it remains to be seen whether other courts will follow this ruling in the future.

[Cliff Fonstein](#) is a partner and [Meredith-Anne Berger](#) is an associate in Seyfarth Shaw's New York office. For more information, please contact your Seyfarth Shaw attorney, a member of the [Whistleblower Team](#), Cliff Fonstein at cfonstein@seyfarth.com or Meredith-Anne Berger at mberger@seyfarth.com.

www.seyfarth.com

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