

SEC Takes Action for Retaliation Against Whistleblower

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The SEC has brought its first enforcement action for alleged retaliation against a whistleblower under the SEC's Dodd-Frank whistleblower rules. The case demonstrates the Hobson's choice companies face when they become aware of a whistleblower's identity. In *In the Matter of Paradigm Capital Management, Inc.*, the company's head trader informed Paradigm that he had secretly disclosed improprieties at the company to the SEC, some which related to trades he had effected. Paradigm immediately retained outside counsel to provide advice. Stating that it needed to investigate, the company thereafter relieved the whistleblower of his day-to-day trading and supervisory responsibilities, tasked him with drafting a report on the improprieties he alleged, and denied him access to the company's network. When the whistleblower requested to return to work, the company resisted and determined the relationship was "irreparably damaged." Attempts to agree on severance terms failed. The case illustrates the dilemmas a company can encounter when faced with a whistleblower. The company may have legitimate interests in understanding the whistleblower's accusations and conduct, limiting its exposure to any further improper conduct, and, in some cases, preserving any cause of action it has against a whistleblower who acted improperly. On the other hand, if the company does not allow the whistleblower to continue to perform his or her regular job responsibilities, retaliation charges may find a sympathetic ear at the SEC. Paradigm also presents a reminder that there is no surefire way to escape retaliation claims. The best strategy a company can use to protect itself is to institute a compliance program that is enforced and establish a monitored compliance hotline. Finally, the company should consistently encourage and reward internal reporting of any wrongdoing.

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