

DC Circuit Upholds SEC's Denial of Dodd-Frank Bounty Award

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On March 20, 2018, the DC Circuit upheld the SEC's denial of a Claimant's application for a Dodd-Frank whistleblower bounty award because the SEC did not rely on the information provided by the Claimant in pursuing an enforcement action against Management Solutions. In upholding the SEC determination, for first time, the court identified the standard of review for an appeal of the SEC's denial of an award in a whistleblower action, holding that the appropriate standard under 5 U.S.C.A. § 706(2)(E) is whether the SEC's determination was based on "substantial evidence." [Doe v. SEC](#), 2018 U.S. App. Lexis 7449 No. 16-1414 (D.C. Cir. Mar. 20, 2018).

Under Dodd Frank, the SEC can pay monetary awards to whistleblowers who voluntarily provide original information to the SEC that led to the successful enforcement of a covered judicial or administrative action in which the SEC recovers an amount over \$1 million. Whistleblowers may recover between 10 and 30% of the SEC's recovery, at the SEC's discretion. In this case, the SEC reasoned that the Claimant should not receive any award because "the Commission employees who investigated and tried the Management Solutions case either did not have access to [Claimant's] information, or had access but did not use the information." *Id.* at *4.

Claimant challenged the SEC's determination based on two procedural issues. First, the Claimant argued that the SEC refused to disclose to Claimant the information relied upon in granting a different claimant a whistleblower award. And second, in denying Claimant's award, the SEC relied upon a declaration by an SEC attorney that was unsigned. *Id.* at *4-6. The DC Circuit declined to set aside the SEC's determination because it was supported by "substantial evidence." In addition, the court held that the SEC's reliance on an unsigned declaration was "harmless error."

Notably, the court's decision comes on the heels of the SEC [granting](#) an award to three whistleblowers totaling nearly \$80 million in a single action. Given this large award and the Supreme Court's recent [proclamation](#) that Dodd-Frank's anti-retaliation provision only covers individuals who provide information to the SEC, we can expect the SEC to receive an influx of tips this year.

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