

D.C. Circuit: No Award to Whistleblower Who Made Disclosure Before Enactment of SEC's Whistleblower Program

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On May 27, 2022, the D.C. Circuit Court of Appeals affirmed an order by the Securities and Exchange Commission ("SEC") denying a whistleblower award under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), holding that information provided to the SEC prior to Dodd-Frank's enactment did not qualify for a whistleblower award under the statute. [Ross v. SEC](#), No. 21-1165 (D.C. Cir. 2022).

Background

Plaintiff-appellant Ross appealed the SEC's denial of his application for a whistleblower award. Between 2005 and 2008, Ross provided information to the SEC about securities violations that ultimately resulted in a successful SEC enforcement action in which defendants were ordered to pay approximately \$100 million.

Among other financial reforms, Dodd-Frank authorized the SEC to give monetary awards to "whistleblowers who voluntarily provided original information to the Commission" when that information led to a successful enforcement resulting in sanctions of over \$1 million. The regulations implementing Dodd-Frank define "original information" in the whistleblower context as, among other requirements, information provided to the SEC "for the first time after July 21, 2010," Dodd-Frank's date of enactment.

Ruling

The D.C. Circuit affirmed the SEC's denial, holding that the information Ross provided did not meet the Dodd-Frank definition of "original information" because it was first provided to the SEC prior to July 21, 2010.

Implications

This ruling confirms that the requirements in Dodd-Frank's whistleblower award provisions will be strictly construed.

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