

[Securities Regulation Daily Wrap Up, TOP STORY—2d Cir.: JPMorgan whistleblower gets another shot under “reasonable belief” standard, \(Oct. 9, 2014\)](#)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

The Second Circuit vacated a district court’s order dismissing a whistleblower complaint in light of the appeals court’s intervening adoption of a “reasonable belief” standard. The district court had determined that the employee had not shown that her complaints about a bank client “definitively and specifically” related to an enumerated category of misconduct, a standard that the Second Circuit rejected in its *Nielsen* decision this past August (*Sharkey v. J.P. Morgan Chase & Co.*, October 9, 2014, per curiam).

Background. As [described](#) in our sister publication *Employment Law Daily*, the former J.P. Morgan Chase executive, Jennifer Sharkey, was terminated after she allegedly reported to the bank her concerns that one of her assigned clients was engaging in one or more of the categories of misconduct enumerated in Sarbanes-Oxley. The District Court for the Southern District of New York initially denied the defendants’ motion to dismiss, holding that Sharkey had pleaded her “reasonable belief” that the conduct reported constituted an enumerated violation. However, in December 2013, the District Court [granted](#) summary judgment for the defendants, concluding that Sharkey failed to engage in protected activity because she did not show that her complaints “definitively and specifically” related to one of the enumerated categories of misconduct.

Nielsen opinion. Eight months later in an unrelated case, the Second Circuit [ruled](#) that although a district court came to the right result in dismissing a whistleblower complaint, its use of the “definitively and specifically” standard was improper. This strict standard, the appeals court explained, was based on a 2006 Administrative Review Board decision that had since been abrogated due to the express statutory language of Sarbanes-Oxley barring retaliation against an employee for conduct the employee “reasonably believes” constitutes an enumerated violation.

Remand. Sharkey appealed the December 2013 summary judgment order to the Second Circuit, which vacated the judgment in light of the subsequent shift in standard and remanded the case to the district court. The appeals court directed the district court to reassess whether any identifiable protected activity under the *Nielsen* standard was a contributing factor in the unfavorable personnel action and, if so, whether the defendants have proven with clear and convincing evidence that they would have taken the same personnel action in the absence of the protected behavior.

The case is [No. 13-4741-cv](#).

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Companies: JPMorgan Chase & Co.

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