

Corporate & Financial Weekly Digest

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Eleventh Circuit Court of Appeals Affirms Dismissal of Whistleblower Retaliation Suit

The plaintiff, a former employee of Stein Mart, Inc., brought claims alleging that Stein Mart wrongfully dismissed her in violation of the Sarbanes-Oxley Act of 2002 and the Florida Whistleblower Act. The U.S. District Court for the Middle District of Florida granted summary judgment in favor of Stein Mart, and the U.S. Court of Appeals for the Eleventh Circuit affirmed on appeal.

The plaintiff alleged that Stein Mart terminated her employment in retaliation for her reporting what she believed to be unlawful business and accounting practices, including: (1) improper collection of markdown allowances from vendors; (2) changing season codes on older inventory; and (3) inaccurate accounting of the value of inventory. Stein Mart contended that it dismissed the plaintiff because she mishandled the company's fragrance purchases during a holiday season and subsequently failed to improve in her performance even after being counseled about her deficiencies.

The Eleventh Circuit observed that in a Sarbanes-Oxley retaliation case, the employee "bears the initial burden of making a prima facie showing of retaliatory discrimination; the burden then shifts to the employer to rebut the employee's prima facie case by demonstrating by clear and convincing evidence that the employer would have taken the same personnel action in the absence of the protected activity." The Eleventh Circuit found that Stein Mart established by clear and convincing evidence that it would have terminated plaintiff's employment "even in the absence of her protected conduct," i.e., that it terminated plaintiff for legitimate, non-retaliatory reasons.

The plaintiff, in contrast, failed to come forward with any evidence, other than her own "personal views," supporting her position that she was terminated because she reported misconduct. Absent such evidence, the Eleventh Circuit concluded that the case could not survive summary judgment.

Johnson v. Stein Mart, Inc., No. 10-13434, 2011 WL 3962819 (11th Cir. Sep. 9, 2011).