

The Whistleblower Protection Statute: Its Impact on Chief Compliance Officers

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The Supreme Court of the United States (?Supreme Court?) in Digital Realty Trust Inc. v. Somers and the Court of Appeals of New York in Sullivan v. Harnisch decided on a fundamental issue important to both chief compliance officers (?CCO?) and shareholders.

In Sullivan and Digital Realty Trust Inc. the courts held that the Dodd-Frank Act's prohibition on employer retaliation against whistleblowers only extends to individuals who have reported the violations of securities laws directly to the Securities and Exchange Commission (?SEC?). The decision by both courts was troubling. These holdings would prove detrimental to CCO's should they report any compliance concerns to management and to shareholders seeking company transparency.

This note will explore the critical question of whether public investment advisers and other entities should be given the unequivocal power to terminate the few employees who are charged with the statutorily mandated role of securing ethical and legal compliance. In Section II, I will explore the inception of the SEC and the relevant legislation and historical occurrences that gave rise to this issue. I will also discuss, in Section III, the imperative role CCO's play in their respective industry as well as in the financial sector. In Sections IV, I will provide a summary of the importance of creating and maintaining a culture of compliance and briefly discuss the Dodd-Frank Act and the Sarbanes-Oxley Act's whistleblower protection statutes. In Sections V, VI, and VII, I will examine the rulings in Sullivan v. Harnisch and Digital Realty Trust Inc. v. Somers and their impact on the compliance and financial industries. In Section VIII, I will argue that the rulings in Sullivan and Digital Realty Trust Inc. were in error. In addition to answering the question of whether entities should be given the unequivocal power to terminate CCO's, in Section IX, I will propose a solution which would limit an entity's incentive to terminate CCO's for unjust reasons through the use of the 8-K disclosure form.

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