File Number S7-16-18

September 7, 2018

Secretary, Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090.

Regarding Section II - E

It is my contention that the Supreme Court decision in Digital Realty v. Somers did NOT comport with the intent of Congress. The SEC should NOT change the definition of "whistleblower", but rather should challenge the Somers decision with another retaliation case brought by the SEC on behalf of another whistleblower.

In deciding Somers, the Court applied strict constructionism only to the term "whistleblower". Fair construction demands that strict constructionism apply equally to the term "Commission". Doing so results in a glaring absurdity.

The statutory definition of "Commission" reads, "There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate." 15 U.S. Code § 78d(a)

Applying strict constructionism, the "Commission" is ONLY the five Commissioners.

The Office of the Whistleblower is NOT the Commission. The USPS is NOT the Commission. Similarly, a whistleblower's supervisor is NOT the Commission.

Under strict constructionism, there presently exists no mechanism whatsoever for a "whistleblower" to provide information directly to the Commission, other than to personally deliver information to all five commissioners simultaneously.

The assertion that the whistleblower must provide information directly to the "Commission" is an absurdity.

To remedy this potential absurdity, Congress directed the "Commission" to define the manner in which a whistleblower may be deemed to provide information to the Commission. The Commission did so via rule making. The Commission defined the deemed receipt by the Commission to have occurred at the precise moment a person provides information regarding a securities law violation to their employer, or to the Office of the Whistleblower, or to the USPS, among others.

When that person provides information to any one of these trusted intermediaries, as defined in the SEC rules, the information is immediately deemed to be received by

the "Commission", and that person immediately fits the definition of "whistleblower". To assert otherwise would result in absurdity and render the whistleblower provisions (as well as substantial portions of the Securities and Exchange Act) superfluous.

At oral argument, Justice Ginsburg herself noted that the Court would have upheld the SEC's interpretation of the term "whistleblower" if respondent or amicus had argued that such an absurdity would result from the narrower definition of "whistleblower".

The statutory definition of "whistleblower" is, "The term "whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission." 15 U.S.C. 78u-6(a)(6).

Truncating the last eleven words of the above definition is another violation of fair construction. It is within those eleven words that Congress explicitly directed the Commission to define the manner in which a "whistleblower" provides information to the "Commission"

To comport with the intent of Congress, the SEC should NOT change the definition of "whistleblower", but rather should challenge the Supreme Court's decision in Somers by initiating another retaliation case in a Distrct Court. The SEC is allowed to bring such a case on a whistleblower's behalf, in order to demonstrate the absurdity upon which the Somers decision was based.

The ideal case for this challenge would be one in which an employee provided information about a securities law violation to their employer, was terminated, then provided that same information to the Commission AFTER termination, but within the 120 day "lookback" provision. That (former) employee fits the SEC's existing single definition of a whistleblower for both an award and retaliation protection. This result comports with the intent of Congress. To assert otherwise, results in an absurdity.

I have withheld my identity since I am a long-suffering unemployed whistleblower, blacklisted by my former employer, and awaiting a decision on my award application for *years*. The award, to which I am fully entitled, although large, would pale in effectiveness as a deterrent next to the better result of re-instatement with my former employer with double back pay. Congress intended that whistleblowers remain at the company to prevent further violations, and explicitly said so in law.

I have already given permission to the Commission to publicly try my case.

The Somers decision was the opposite of Congress' intent. Were a case such as mine to be argued competently, Somers would be overturned.