

Corporate & Financial Weekly Digest

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[Whistleblower's Claim Dismissed for Lack of Subjective Belief](#)

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The U.S. Court of Appeals for the Eleventh Circuit upheld the U.S. Department of Labor's review of a summary dismissal of a whistleblower complaint filed by petitioner Michael Gale, the Chief Operations Officer and a director of World Securities Group (WSG), the affiliated broker-dealer of World Financial Group (WFG). Gale's complaint alleges that he was discharged because he (1) provided information and opposed decisions made by company officers relating to waste and misuse of corporate monies that resulted in loss of shareholder equity and (2) raised concerns that the operation of WSG by WFG violated certain Securities and Exchange Commission rules and regulations.

The Administrative Law Judge (ALJ) granted WFG's motion for summary dismissal on the ground that Mr. Gale's complaint failed to plead that he reasonably believed WFG's activities were illegal or fraudulent in nature, an essential element in a whistleblower action under the Sarbanes-Oxley Act (SOX). The ALJ found that none of Mr. Gale's expressed concerns regarding WFG's activities contained any factual basis for finding that WFG committed illegal or fraudulent acts prohibited by SOX. On appeal, the Department of Labor's Administrative Review Board agreed with the ALJ's finding that Mr. Gale had not presented sufficient evidence to create a genuine issue of fact that he engaged in activity protected by SOX.

On appeal to the Eleventh Circuit, Mr. Gale argued that to state a whistleblower claim it is not necessary for an employee to subjectively believe that his employer engaged in unlawful conduct, but rather asserted that it was sufficient for him to voice "sufficient concerns" about his employer's practices. The Eleventh Circuit rejected Mr. Gale's arguments and affirmed the dismissal of his claim, reasoning that to be protected by SOX, a whistleblower must reasonably believe that the information he is disclosing to a supervisory authority constitutes a violation of federal laws relating to fraud against shareholders. The court determined that while Mr. Gale had reservations about WFG's practices, he did not know whether those practices were illegal, relying on the fact that Mr. Gale admitted during his deposition that he did not actually believe that WFG was engaging in illegal or fraudulent activities. (*Gale v. U.S. Dep't of Labor*, No. 08-14232, 2010 WL 2543138 (11th Cir. 2010))