

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 29 July 2020

CASE NO.: 2019-SOX-00029

In the Matter of:

NATHANIEL LINDZEN,
Complainant,

v.

STATE STREET GLOBAL ADVISORS,

and

STATE STREET GLOBAL ADVISORS TRUST CO.,
as SUCCESSOR TO STATE STREET GLOBAL ADVISORS,
Respondents.

**ORDER DISMISSING COMPLAINT FOR LACK OF JURISDICTION, COMPLAINANT
HAVING FILED IN U.S. DISTRICT COURT**

This proceeding arises from a complaint of retaliation, filed under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of The Sarbanes-Oxley Act of 2002 (“SOX”), 18 U.S.C. § 1514A, and its implementing regulations, 29 C.F.R. Part 1980, *as amended* by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), P.L. 111-203, § 922. The matter was assigned to me and was scheduled for a formal hearing on June 16, 2020, but was continued generally due to the COVID-19 pandemic.

Complainant filed his complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) on October 28, 2017.¹ On January 31, 2019, OSHA dismissed the complaint, finding that “the burden of establishing that Complainant was retaliated

¹ Complainant’s original complaint was filed with OSHA on October 28, 2017, after which he filed the First Amended Complaint (“FAC”). The FAC is dated May 2, 2018, and was filed with OSHA on or about May 4, 2018. The matter was referred to the Office of Administrative Law Judges (“OALJ”), and the FAC was filed with this Court on October 18, 2019, and date stamped according to standard office procedures. However, through inadvertence, the FAC was never entered into OALJ’s Case Tracking System (“CTS”). It is therefore attached to this Order.

against in violation of SOX cannot be sustained.” On February 23, 2019, Complainant filed his objection to OSHA’s findings and dismissal, and requested a hearing before an Administrative Law Judge.

On July 16, 2020, Complainant filed a copy of his docketed U.S. District Court complaint. A review of the district court complaint shows that it is based upon the same facts as the administrative complaint filed with OSHA. *See Lindzen v. State Street Corp.*, Civ. No. 1:20-cv-11298-LTS (D. Mass. July 9, 2020).

The Sarbanes-Oxley Act of 2002 permits a complainant to file an action in the appropriate federal district court:

If the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

18 U.S.C. § 1514A(b)(1)(B). Complainant filed his complaint in district court more than 180 days after he filed his complaint with OSHA, and there has been no showing of bad faith.

Since Complainant has chosen to proceed in district court, the Department of Labor (“DOL”) no longer has jurisdiction over this case. *Fuqua v. SVOX AG*, ARB No. 14-069, 2015 WL 5781077, at *2 (Sept. 2, 2015) (“Section 1514(b)(1)(B) permits a party to file a claim with a federal district court, upon satisfying a few minimal conditions, and remove it from DOL’s jurisdiction.”).

For the reasons stated above, I no longer have jurisdiction over this case. Accordingly, **IT IS HEREBY ORDERED** that the claim is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

NORAN J. CAMP
Administrative Law Judge

Boston, Massachusetts

FIRST AMENDED COMPLAINT

Nathaniel Lindzen
57 School Street
Wayland, MA 01778

May 2, 2018

Via Email

Michael Mabee
Assistant Regional Administrator - Whistleblower
U.S. Department of Labor - OSHA
J.F.K. Federal Building, Room E-
340 Boston, MA 02203

Re: Nathaniel Lindzen/State Street Global Advisors

Dear Mr. Mabee:

I, Nathaniel Lindzen, am representing myself in matters relating to my former employment as a Compliance officer with State Street Global Advisors (hereinafter the “Firm” or “SSGA”), the asset management division of NYSE listed State Street Corporation. I am submitting this claim of whistleblower retaliation pursuant to the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, and the Dodd-Frank Act, 15 U.S.C. § 78u-6(h)(1)(A).

In response to my communicated concerns and complaints to supervisors regarding what I reasonably believed were potential or actual violations of federal banking, securities and commodities regulations SSGA retaliated against me. Among other retaliatory acts, SSGA denied me bonus compensation, stripped me of my job duties, publically demoted me, and ultimately terminated me effective September 1, 2017.

Introduction

On April 13, 2015 I was hired by SSGA as the manager of the newly created Trade Oversight Compliance Team which resided in SSGA's Compliance Department. My duties included:

- a) Managing a team of analysts who performed regular spot checks of the SSGA Control Room. The spot checks consisted of reviewing or independently performing the testing that the Control Room did and then noting or escalating any differences in the findings. The Control Room itself was charged with the review of a random sample of

telephonic and electronic communications made by SSGA traders and relevant portfolio managers. Their goal was to identify communications that might indicate inappropriate or illegal behavior such as the manipulation of securities or commodity prices, sharing of non-public information, or receipt of kickbacks from brokers. They also performed trade execution review.

- b) The testing of data associated with investment and trading activity. This testing was structured to identify potential breaches of securities/commodity regulations and internal policies and procedures and was performed on a quarterly basis. Tests included those designed to identify potential instances of insider trading; unfair treatment of clients; manipulative trading practices; and failure to meet common law Best Execution obligations to clients. The testing results were aggregated in the Trade Oversight Quarterly Memorandum. This document was then used for client and regulatory reporting by downstream users.

Within a few months of my start at the Firm, I began raising concerns to my direct supervisor, Global Head of Investment Compliance Casey Smith (“Smith”), SSGA CCO Alyssa Albertelli (“Albertelli”), former SSGA Investments COO Rene Guilmet (“Guilmet”) and others with respect to significant breaches in SSGA's Compliance program, internal controls, and Federal Reserve Bank of Boston FX MRIA remediation program (“FRBB FX MRIA”). My complaints and disclosures to SSGA were based on my reasonable belief that the aforementioned breaches constituted violations of a host of federal laws and regulations governing the Firm including: 17 CFR 275.206(4)-7 (Compliance Practices and Procedures), 17 CFR 275.204-2 (Books and Records), Section 28(e) of the Securities Exchange Act of 1934 (Soft Dollar Usage), Exchange Act Rule 13a-15(c) (Internal Controls and Reporting, including SOC-1 Controls), 17 CFR 24-0.13b2-1 (Falsification of Accounting Records), 17 CFR 240.10b5-1 (Insider trading), 17 CFR 275.206(4)-8 (Fraud Involving Pooled Investment Funds), 12 USC 248(n) (Examinations by the Federal Reserve), 12 U.S.C § 1833a (FIRREA) and 12 U.S.C. § 1851 (Volcker Rule).

The Plaintiff, Position and Employer

1. Plaintiff: I, Nathaniel Lindzen, reside in Wayland, Massachusetts.
2. Hiring and Position: I was hired by State Street Global Advisors on April 13, 2015, after over six months of interviews, to lead and manage their newly created Trade Oversight Compliance Team. To this position I brought over 10 years of experience as a fixed income and derivatives trader at several large multinational banks and a JD from Fordham School of Law. My offer letter, official biography and official letters to SSGA clients described me as the manager of the Trade Oversight team which was formed

upon my arrival.

3. Relevant Parties: The Trade Oversight Compliance Team fell within what was internally referred to as the SSGA Compliance Department. This team provided trade oversight compliance services to, or on behalf of, various subsidiaries, affiliates and internal divisions of State Street Corporation. These include, but are not limited to, State Street Global Advisors, State Street Global Advisors Ltd., State Street Global Advisors Asia Ltd., State Street Global Advisors Fund Management Inc., State Street Global Advisors Funds Distributors LLC, State Street Bank & Trust Co., and State Street Global Advisors Trust Co.
4. The Firm: The relevant parties are divisions, affiliates and subsidiaries of State Street Corporation which is publically traded on the NYSE.

I quickly encounter a Firm culture that condones and encourages improper and illegal Compliance practices.

5. Smith and Albertelli's response to instance involving potential insider trading: In August of 2015, my team and I identified a potential instance of insider trading. This incident involved a huge purchase of a particular stock one day before the executing broker released a positive research report that drove the share price higher by over 10%. I alerted Smith and Albertelli to this incident. Upon being 'notified of this incident, Smith ceased all electronic or telephonic communication on the matter and resorted to in-person communication or hand written notes. After the essential facts had been uncovered, Smith also removed me from the investigation despite it being within my official job duties. I repeatedly followed up with respect to this escalation seeking further information on the investigation. I was only told by Smith that "we are looking into it and it has been escalated." Smith provided no contemporaneous written evidence of the investigation. I was also told to retroactively amend policies and procedures that required reporting of the incident to various committees and fund boards of directors. When I persisted and tried to report it to the boards of directors, Albertelli responded with displeasure and demanded I remove any mention of it.
6. Internal Control and SOC-1 Violations: Beginning in August of 2015 I began noticing unsupervised retroactive trade amendments being performed independently, and without oversight, by SSGA traders. These amendments directly impacted the market value of the transactions by way of altered prices and other factors that directly affected the monetary value of the transactions. These retroactive amendments also rendered the Firm's 2015 SOC-1 Independent Audit (performed by Ernst & Young) false and misleading. I promptly raised this matter with Smith. Smith refused to escalate the

matter and instead insisted I reach out to Guilmet. I did reach out to Guilmet. In early February of 2016 Guilmet called me and threatened me with termination if I did not drop the matter. I reported these threats to Smith. My 2015 bonus, announced at the end of February of 2016 was cut sharply relative to others and was a fraction of what I had been promised by Albertelli (7.5% vs. 35%). Planned hiring requisitions for my team were also reallocated elsewhere despite an increasing workload - a process commonly referred to within the Firm as “working an [undesirable] employee out.”

7. The FRBB Mandated FX Transaction Surveillance System: from at least October of 2015 onwards, I repeatedly made warnings to Smith, Guilmet, Albertelli and Control Room managers with respect to the Trade Cost Analysis software system vended by ITG, Inc. (the “ITG TCA System”). The ITG TCA System had been purchased, in significant part, to monitor for improper foreign exchange and derivative trading practices. This monitoring had been required by SSGA's official answer to the FRBB FX MRIA. I provided dozens of verbal and written warnings regarding programming and data errors in the system. I also reported to Smith and others that ITG had refused or was unable to provide any validation of the logic underlying the system as required by Federal Reserve Supervisory Letter SR 11-7. I also worked daily over the course of several months to fix and debug programming and data errors contained in the ITG TCA System. During meetings regarding vetting and implementation of the ITG TCA System that occurred early in February of 2016 I enumerated ongoing and serious problems with the ITG TCA System - problems that I also stated precluded its safe implementation, FRBB FX MRIA deadlines notwithstanding. Guilmet, then a very powerful executive at SSGA, reacted with displeasure and hostility. I promptly complained to Smith regarding these threats. Smith reacted with indifference and hostility. My 2015 bonus, announced at the end of February 2016 was cut sharply relative to others and was a fraction of what I had been promised by Albertelli (7.5% vs. 35%). Planned hiring requisitions for my team were also reallocated elsewhere despite an increasing workload.
8. Throughout the fall of 2015 and spring of 2016 I also alerted Smith, Guilmet and others as to failings in the programming or Control Room use of internally developed transaction surveillance software. This software, collectively labeled the “Cognos Reports,” had like the ITG TCA System been part of SSGA’s official answer to the FRBB FX MRIA. The stated goal of the Cognos Reports was to identify red flags associated with trading and investment activity. My efforts to remediate this situation were met with hostility by Guilmet and Smith. In March of 2016, Guilmet aggressively ordered the IT Department to withhold programming resources necessary for my work. My 2015 bonus was sharply reduced. My 2016 mid-year performance review was also fictitious and highly negative. This review was written by Smith and approved by Albertelli.

9. In April of 2016 I independently reported the troubled history of the ITG TCA System to Internal Auditors and illuminated the deficiencies previously raised to Smith, Guilmet and others. In private meetings with both Smith and Albertelli, I was heavily criticized for reaching out to Internal Audit. Shortly thereafter I was screened from meetings essential to my job function while similarly situated employees were not. I was also directly screened from speaking with the Internal Auditors. I reported this to the Internal Auditors who did nothing. I later complained to Albertelli about this. Albertelli then angrily told me that I was being excluded because of my prior disclosures to Internal Audit. I also received a 2016 mid-year performance review that was fictitious and highly negative. This review was written by Smith and approved by Albertelli.
10. Soft Dollar Violations: In July of 2016, SSGA acquired General Electric Asset Management (“GEAM” or “Stamford”). Unlike SSGA, Stamford had a very active Soft Dollar program. (Soft Dollars are essentially commission rebates from securities brokers.) During a review of Soft Dollar uses in Stamford, I uncovered several clear violations of the Securities Exchange Act Rule 28(e) Safe Harbor. I reported this to Smith and Albertelli who reacted with hostility. Albertelli responded with displeasure and impliedly threatened me with termination or a performance plan. Smith removed the Stamford Soft Dollar review from my direct purview. I also received a 2016 end-of-year performance review that was fictitious and highly negative. This review was written by Smith and approved by Albertelli. In retaliation I also received no bonus for the year 2016.
11. Control Room Failures: From August of 2016 until my termination I repeatedly warned Smith (and later Albertelli) of repeated failures in the Control Room’s trading communication and transaction surveillance efforts. This was a violation of SSGA’s official answer to the FRBB FX MRIA. My 2016 end-of-year performance review was fictitious and highly negative. I received no bonus for 2016.
12. Quarterly Trade Oversight Memorandum is largely removed from my purview: In response to my previous whistleblowing activity Smith removed this testing from my control in the spring of 2016 and placed it with a junior colleague who was nominally a direct report of mine. This colleague, Chris Butler (“Butler”), was also effectively removed from my authority and I was stripped of otherwise normal involvement in his review process and bonus determination. I complained of this to Smith who reacted with hostility; Butler reacted with extreme and open insubordination.
13. Q3 2016 Trade Oversight Memorandum: Butler obtained a position at another firm and voluntarily left his employment with SSGA on December 9, 2016. At this point I was

again charged with carrying out the Quarterly Trade Oversight testing myself. While doing so I uncovered several serious breaches of SSGA Policies and Procedures that had been largely whitewashed by Butler and Smith in prior quarters. Beginning with the formalized quarterly testing reports for Q3 2016 (performed in Q4 2016), I raised several breaches with Smith, including the fact that SSGA's newly acquired Stamford office had no formal policies and procedures in place for matters such as Best Execution and other legally required compliance measures. Smith responded with hostility and, in order to whitewash the potential breaches, requested retroactive amendments to the applicable policies and procedures or simply demanded that I attest, open red flags notwithstanding, that "no issues had been found" on the Trade Oversight Memorandum. My replacement requisition for Butler was thereafter stripped. My end-of-year performance review was fictitious and highly negative. I also received no bonus for the year 2016.

14. SSGA Quality Assurance Team independently verifies my concerns: In January and February of 2017, the State Street Corporation Quality Assurance Team, reviewed the Quarterly Trade Oversight Memorandums being produced by my team and noted the breaches of SSGA policies and procedures that I had earlier complained to Smith about. Specifically, they noted that several red flags had not been escalated and reported in compliance with SSGA policies and procedures and had instead been labeled with the finding of "no issues found." I told them that I did not disagree with their findings but that Smith did. Smith pressured me to assist in misleading the Quality Assurance Team which I refused to do. He then independently reached out to the managers of this team and successfully quashed their investigation.

More recent episodes of retaliation for protected activity

15. The Q4 2016 Quarterly Trade Oversight Testing: On or around April 20, 2017, I completed most, if not all of the Q4 2016 quarterly Trade Oversight testing. This testing had been performed, by random sampling, on a very small subset of SSGA funds since staffing was now unavailable for more comprehensive testing of all of SSGA's funds. Even using a tiny sample pool, I found several matters requiring escalation during the testing. In response to my findings, Smith reacted with hostility and repeatedly demanded that I delete my official findings in the memorandum and replace them with a blanket attestation of "no issues found." I responded to Smith that per existing policies and procedures this was completely inappropriate. Smith removed me from the task, deleted my findings and replaced them with "no issues found." This reporting was then passed on to various oversight committees and used for client and SEC reporting. On May 1, 2017 Albertelli demoted me by way of blast email to the entire global SSGA Compliance Department. Smith also announced my demotion to members of the State Street Corporation beyond the SSGA Compliance Department. After the demotion I was forced to train replacements and stripped of the majority of my remaining duties. A little

over 2 months later, I was terminated.

16. Potentially Excessive Fee Charging: During the same Q4 2016 Quarterly Trade Oversight Memorandum testing I noticed large performance differences between funds having similar or identical investment holdings. The performance differences were found to have been caused by fee differentials between the different funds, a matter of particular concern in light of the Firm's Deferred Prosecution Agreement with the DOJ which was directly related to excessive fee charging. When I escalated the matter to Smith, Smith characteristically did not investigate or otherwise escalate the matter further. Instead he repeatedly requested that I bring the matter to the attention of Guilmet. In May of 2017 I then notified SSGA CLO Philip Gillespie that I had been repeatedly asked by Smith to reach out to Guilmet and that since Guilmet was the COO of the very department charging the fees, that I found this to be a conflict of interest and inappropriate. CLO Gillespie thanked me for my efforts but did not address my concerns. On July 12, 2017 I was terminated.
17. Reports to Regulators: I reported State Street's malfeasance to their regulators; State Street had direct or constructive knowledge of this and my termination was also causally related to this whistle-blowing.

Conclusion

18. An investigation by the DOL will prove that SSGA violated my rights under the Sarbanes-Oxley and Dodd-Frank Acts by retaliating against me because I reported and opposed Compliance practices I that reasonably believed were in violation of the law, SEC and CFTC regulations.

I will be happy to cooperate in any investigation that the Department of Labor undertakes. Please feel free to contact me directly if there is any further information I can provide you with. Should I retain counsel on this matter; I will also notify you of that.

Sincerely,

Nathaniel M. Lindzen