

Court Reads Dodd-Frank Whistleblower Law Narrowly, Excludes Internal Whistleblower

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[Digital Realty Trust, Inc. v. Somers](#)

In 2014, Paul Somers, a vice president for a real estate investment trust, reported to senior management several suspected securities-law violations by the trust. He was subsequently terminated. He brought suit claiming protection as a whistleblower as defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which defines whistleblowers as “any individual who provides . . . information relating to a violation of securities laws to the [Securities and Exchange] Commission . . . he did not seek protection under the Sarbanes-Oxley Act of 2002 which first required whistleblowers to exhaust their administrative remedies before filing suit. The trust moved to dismiss the complaint, arguing that Somers did not qualify as a whistleblower under Dodd-Frank because he had not reported anything to the SEC. The district court denied the motion, and the Ninth Circuit affirmed, in part because it believed the statutory definition as written would narrow protections “to the point of absurdity. Resolving a circuit split on the issue, the Court reversed in an opinion by Justice Ginsburg, holding that the Dodd-Frank definition must be read as written, requiring that whistleblowers report matters to the SEC to receive protection, and holding that the statutory language was sufficiently clear to preclude any deference to the SEC’s alternative definition that would have included Somers. Justice Sotomayor, joined by Justice Breyer, filed a concurrence to note her support of using legislative history to resolve the case. Justice Thomas, joined by Justices Alito and Gorsuch, also filed a concurrence objecting to the use of legislative history in this case, given the clarity of the statute.