

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JENNIFER SHARKEY,

Plaintiff,

-v-

J.P. MORGAN CHASE & CO., JOE KENNEY,
ADAM GREEN, and LESLIE LASSITER, in
their official and individual
capacities,

Defendants.

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For the defendants:
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DENISE COTE, District Judge:

This Sarbanes-Oxley retaliation case has been pending for nearly nine years. After multiple dismissals and appeals, the case was tried to verdict before a jury in November 2017. At the conclusion of the five-day trial, the jury awarded plaintiff Jennifer Sharkey ("Sharkey") \$563,000 in back pay damages, and an identical amount for her emotional distress. Neither amount can be supported by the trial record. With reluctance, the

Court concludes that awards of damages of this magnitude reflect a verdict infected by passion and prejudice. Defendants have moved for post-verdict relief. For the reasons given below, judgment as a matter of law is entered in the defendants' favor on a portion of the damages claim, a new trial is conditionally ordered on that portion of the damages, and a new trial is ordered on liability and the remainder of the plaintiff's request for damages.

PROCEDURAL BACKGROUND

Following her discharge in August 2009 by J.P. Morgan Chase & Co. ("J.P. Morgan"), on October 22, 2009, Sharkey filed a complaint with the Occupational Safety and Health Administration ("OSHA") alleging violations of Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("SOX"). On or about April 12, 2010, OSHA issued an order dismissing her complaint.

Sharkey then brought this action by filing a complaint on May 10, 2010, alleging the same SOX claims. The case was assigned to the Honorable Robert W. Sweet. Defendants moved to dismiss the complaint, and on January 14, 2011, the motion was granted with leave to replead. Sharkey v. J.P. Morgan Chase, 2011 WL 135026 (S.D.N.Y. Jan. 14, 2011). A subsequent motion to dismiss the amended complaint was denied on August 19, 2011. Sharkey v. J.P. Morgan Chase, 805 F. Supp. 2d 45 (S.D.N.Y.

2011).

On December 12, 2013, Judge Sweet granted the defendants' motion for summary judgment. Sharkey v. J.P. Morgan Chase, 2013 WL 10796833 (S.D.N.Y. Dec. 12, 2013). The Second Circuit vacated and remanded that decision on October 9, 2014 for reconsideration in light of Nielsen v. AECOM Tech. Corp., 762 F.3d 214, 221-22 (2d Cir. 2014) and Bechtel v. Admin. Review Bd., 710 F.3d 443, 451 (2d Cir. 2013). Sharkey v. J.P. Morgan Chase, 580 F. App'x 28 (2d Cir. 2014).

The defendants again moved for summary judgment, and on October 9, 2015, the motion was granted on the basis that Sharkey had failed to make a prima facie showing that any protected activity under SOX was a contributing factor in her firing. Sharkey v. J.P. Morgan Chase, 2015 WL 5920019 (S.D.N.Y. Oct. 9, 2015). The Second Circuit then vacated and remanded that finding, holding that the temporal proximity between the protected activity and her discharge was sufficient to establish a prima facie case. Sharkey v. JP Morgan Chase, 660 F. App'x 65 (2d Cir. 2016). The Second Circuit also declined to affirm on the basis of the defendants' alternative ground, that Sharkey lacked a reasonable belief for her reports of fraud, holding that the issue gave rise to disputes of fact, and did not compel the conclusion that Sharkey lacked a reasonable belief of fraud.

Id.

After further proceedings before Judge Sweet, including rulings on motions in limine on January 26, 2017, the case was reassigned to this Court on April 20, 2017. This Court then held conferences on May 5 and July 31, 2017, to determine if any of Judge Sweet's rulings merited reconsideration. At the July 31 conference, the Court declined to change any of Judge Sweet's rulings on the motions in limine. The case was tried over five days between October 30 and November 6, 2017.

At the end of the plaintiff's testimony, defendants made an oral motion for a directed verdict as a matter of law on all issues of liability. The Court reserved decision. After the conclusion of the evidence, on November 4, 2017, the defendants again made a motion for judgment as a matter of law. Both the defendants and the plaintiff submitted briefs on the motion. On November 6, the case was submitted to the jury, and on November 7, the jury returned a verdict.

The jury found that Sharkey had not proven her case as to two of the defendants, Joe Kenney and Adam Green.¹ As to defendants Leslie Lassiter and J.P. Morgan, the jury found that Sharkey had proven her claim of retaliation, and that Lassiter

¹ At trial, Sharkey presented virtually no evidence that Green or Kenney were aware of any protected activity by Sharkey, much less that any protected activity was the cause of any decision they made to terminate her employment.

and J.P. Morgan had failed to prove their affirmative defense. As to damages, the jury found that the defendants had not shown that Sharkey failed to mitigate her damages and that she was entitled to \$563,000 in back pay. The jury also found that Sharkey was entitled to emotional distress damages, and awarded her the identical amount of damages for her emotional distress, \$563,000.

The defendants then renewed their motions as to J.P. Morgan and Lassiter, and added a request in the alternative for a new trial. The Court also made post-verdict comments on the record generally indicating the Court's inclination as to the post-verdict motions. The motions became fully submitted on December 20, 2017.

TRIAL EVIDENCE

The undisputed and/or overwhelming weight of the trial evidence established the following. Sharkey had worked in the banking industry for approximate 12 years before joining J.P. Morgan in November 2006 as a private banker. In 2008, J.P. Morgan restructured certain of its services for its high-net-worth clients. The restructuring placed one person in charge of each client relationship, a person which J.P. Morgan called a "Private Wealth Manager." The wealth manager effectively served as the face of the bank, and was the primary point of contact



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