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Salix Pharma Beats Ex-Worker's FCA Retaliation Suit

By **Kevin Stawicki**

Law360 (October 9, 2019, 6:49 PM EDT) -- A New York federal judge on Wednesday shut down a former Salix Pharmaceuticals employee's suit claiming she was subjected to retaliation after raising concerns under the False Claims Act about a medical education program, saying she failed to show how her activities led to her dismissal.

U.S. District Judge Denise Cote granted summary judgment to Salix Pharmaceuticals Inc. in Rasvinder Dhaliwal's suit that the Second Circuit pared down in March, saying that she failed to show how her complaints questioning the legality of a medical education program caused her termination in 2013.

The Second Circuit had determined that the district court properly granted summary judgment to Salix in 2017, saying Dhaliwal's complaints about the company's marketing materials weren't protected under the FCA. But Dhaliwal's claim that the education program was a "thinly veiled kickback scheme" amounted to protected activity, the panel said, ordering the court to reconsider whether Dhaliwal's firing violated FCA retaliation provisions.

While Dhaliwal argued that her conversations with management in April 2012 about her concerns led to retaliation in the form of delaying documents about the company's business goals, Judge Cote said Wednesday that Dhaliwal failed to give any reason to conclude that her complaints and subsequent activities were linked.

"No fact finder could conclude that the delay in the third quarter of 2012 was due [to] Dhaliwal's April 2012 conversation," Judge Cote wrote, adding that Salix didn't have to present any reason for the delay. "No such justification is required where, as here, the plaintiff has failed to make out a prima facie case of retaliation."

Judge Cote also shut down Dhaliwal's claim that Salix's decision to offer her another job amounted to retaliation, saying that she failed to make the case that the new job was a disguised demotion just because it lacked opportunities for upward mobility.

"Being provided the option to change job roles, or to remain in one's current role, would not dissuade a reasonable worker from taking action to prevent the submission of false claims," the judge wrote.

Dhaliwal, who was a national accounts manager for the New Jersey-based Salix until her 2013 dismissal, said in her lawsuit filed in 2015 that the company was violating the FCA through its marketing,

disparities in discounts, education programs and promotion of its Solesta products.

After Dhaliwal raised those concerns with the company's chief financial officer in 2013, she said she was verbally abused by her supervisors, denied a promotion, offered an undesirable position and stripped of her stock awards, according to the complaint.

Judge Cote granted Salix summary judgment in 2017, saying that she failed to show that her activities were intended to expose or stop fraud.

Months after the Second Circuit remanded the case in March, Salix filed its motion for summary judgment, saying Dhaliwal failed to make the case that her complaints led to her termination.

"Although she attempts to rely on temporal proximity, the timeline undercuts any causal connection," Salix said. "Nearly all of the alleged employment actions Ms. Dhaliwal cites as retaliatory began well before she raised her complaints."

Counsel and representatives for the parties did not immediately respond to requests for comment Wednesday.

Dhaliwal is represented by Danilo Bandovic of Derek Smith Law Group.

Salix is represented by Benjamin J. Razi and Steven Winkelman of Covington & Burling LLP.

The case is Dhaliwal v. Salix Pharmaceuticals Ltd., case number 1:15-cv-00706, in the U.S. District Court for the Southern District of New York.

--Editing by Haylee Pearl.

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