

Whistleblowers

Citigroup Whistleblower Tax Case Dismissed by N.Y. Appeals Court (1)

BNA Snapshot

- Plaintiff alleged Citi owed \$800 million in taxes to state
- Allegations were already publicly disclosed

By Gerald B. Silverman

Citigroup Inc. has finally put a whistleblower lawsuit behind it after a mid-level New York appeals court dismissed a case that could have cost the company \$800 million in state taxes.

The court said June 28 that the claims against the company were barred because the allegations by the whistleblower were already publicly disclosed and couldn't be brought under the state False Claims Act.

The plaintiff-whistleblower in the case told Bloomberg Tax that he won't be appealing the decision.

The five-and-a-half-year-old suit, brought by Indiana University economics professor Eric Rasmusen, was one of the highest-profile whistleblower cases filed after New York changed its law to allow tax cases to be brought under the False Claims Act.

Rasmusen argued that Citigroup improperly took about \$800 million in state net-operating-loss deductions in connection with the sale of stock to the U.S. Treasury Department under the Troubled Asset Relief Program.

"I wish the appeals court had addressed the substance of whether I am right that Citigroup owes some \$800 million in taxes to New York state," Rasmusen said. "That would put pressure on the state to collect it."

'Public Disclosure Bar'

The New York Supreme Court Appellate Division, in its June 28 ruling, unanimously upheld a lower state court decision to dismiss the case. It cited a section of the False Claims Act that requires courts to dismiss qui tam actions when the information on which the allegations are based has already been publicly disclosed.

"The court lacked subject matter jurisdiction over this action because plaintiff's allegations that defendant wrongfully underpaid its New York State taxes are derived from and are substantially similar to allegations that were already in the public domain," the court said. "In view of the foregoing, we need not reach the issue of whether the complaint states a cause of action," it said.

Randall M. Fox, a partner at Kirby McInerney LLP in New York, told Bloomberg Tax that the decision is unlikely to have an impact on other whistleblower cases.

"The public disclosure bar is a well-known part of the False Claims Act, and the appellate court simply applied it in the one substantive paragraph of its short decision," Fox said in an email.

"The taxpayers benefit enormously when whistleblowers bring forward frauds harming the government that have remained hidden or for whatever reason defied appropriate scrutiny," he said. "The public disclosure bar helps keep the focus on those cases that maximize the benefits to the taxpayers by making sure public money is collected and used the way it is supposed to be."

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The case is *New York ex rel. Rasmusen v. Citigroup, Inc.*, N.Y. App. Div., 1st Dep't, No. 100175/13, 6/28/18.

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