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Issue Date: 31 August 2015

CASE NO.: 2014-CFP-00005

IN THE MATTER OF

DAMION HURST,
Pro-Se Complainant

v.

BRICE, VANDER, LINDEN & WERNICK,
Respondent

DECISION AND ORDER

Procedural Background

This proceeding arises pursuant to a complaint alleging violations under Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act).[1] Complainant filed his initial complaint with the Occupational Health and Safety Administration (OSHA), which issued a decision 14 Jan 14 dismissing the complaint. Complainant filed an objection and the case was referred to formal hearing before the Office of Administrative Judges. After extensive and litigious pre-hearing proceedings the case ultimately came to hearing on 17 Nov 14. At the hearing, the parties were afforded an opportunity to call and cross-examine witnesses and offer exhibits. Because of the volume of exhibits and Complainant's unfamiliarity with hearing procedure, there was confusion over a variety of evidentiary issues and objections made by Complainant. In in order to accommodate him and ensure he understood the process, the hearing took longer than anticipated and was recessed at the end of the day. It was completed by telephone conference on 24 Nov 14.

At the end of the hearing, we reviewed what exhibits were going to be admitted as part of the evidentiary record on which I would base my decision. We then set a briefing schedule of 13 Feb 15 (Complainant's opening), 27 Mar 15 (Respondent's answer), and 27 Apr 15 (Complainant's reply).

[1] 12 U.S.C. § 5567.

Complainant filed his opening brief on 23 Feb 15. Respondent filed two answers.[2] Instead of filing an answer brief, Complainant initiated a reprise of the prehearing motion litigation with:

- Motion to Strike and Impose Sanctions (20 Apr 15)
- Request for an Extension of the 27 Apr 15 date for his reply brief (30 Apr 15)
- Supplemental Motion to Strike and Impose Sanctions (5 May 15)
- Additional Exhibits in Support of Supplemental Motion (18 May 15)[3]

Respondent answered those motions on 13 and 28 May 15. Complainant then filed:

- Request to Extend Time to Reply to Answers (15 Jun 15)
- Reply to Respondent's Answers (13 Jul 15)
- Motion to Reopen the Record (13 Jul 15)[4]

Respondent answered those filings on 29 Jul 15. On 31 Jul 15, I conducted a conference call and informed the parties of my rulings on Complainant's post-trial motions. I offered them an opportunity to supplement their previous briefs in light of that ruling, but both declined.

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[2] Respondent initially filed a brief on 30 Mar 15 based on counsel's assumption that Complainant had not filed one. However, it later discovered it had received a brief from Complainant and filed a supplemental answer on 13 Apr 15.

[3] The grounds for Complainant's initial motion were twofold. First, he revisited his prehearing complaints about what he considered to be Respondent tardy discovery responses and argued that Respondent's answer to his brief was similarly untimely and should be stricken. There have been instances in this case where both parties could have been more efficient in conducting discovery and filing documents. However, I repeatedly tried to explain to Complainant in the prehearing motion practice that unless there is compelling reason to do otherwise because of obstreperous conduct by a party, my decision would be based on the merits of the case and as complete of a record as possible. Nonetheless, Complainant continued to focus much of his efforts on procedure rather than substance. The motion to strike as untimely is denied.

The other basis for Complainant's initial motion was his complaint that he had been misled by Respondent's shifting theory of the case and reliance on his mishandling of protected personal information as a basis for the adverse action. However, Respondent's position has always been that any adverse action taken against Complainant was because of poor job performance. Indeed, it was Complainant who in large part offered and developed the evidence that his mishandling of protected personal information was a factor in Respondent's assessment of his job performance. His motion to strike on that basis is denied.

In his supplement, Complainant largely restated his previous arguments, but also alleged that Respondent's counsel failed to produce a key document that Complainant had previously been given by Respondent while still employed. Complainant did not explain how the failure to produce prejudiced his ability to try his case (assumedly because he already knew about it). Rather, Complainant argued how the failure showed counsel and Respondent to be unethical and duplicitous. He then asked in general terms for sanction for that conduct. The motion for sanctions is denied.

[4] In his motion to reopen, Complainant submitted 5 exhibits. He claims the first (his termination notice) was not provided to him in discovery. The second is his Texas Workforce Commission file related to his claim for unemployment. The last three relate to local state court documents concerning a foreclosure discussed in the case. Exhibits 2-5 clearly existed and would have been just as available to Complainant before the hearing as they were after. There is no compelling reason in equity or law to allow him to continue to string out this litigation even further. On the other hand, the termination notice is a central document and based on his representation that he didn't have it at hearing, I will include it in the evidentiary record as CX-135.

Accordingly, my decision is based on the entire record, which consists of the following:[5]

Witness Testimony of

Complainant
Caitlin Hooper
Sharon Goldstein
Darronica Smith
Stephanie Gilliam
Hilary Bonial
Ryan McManaus
Paul Spicker

Exhibits

Complainant's Exhibits (CX) 2-3, 5-8, 11-13, 18-22, 29, 32, 35-37, 39-42, 45-47, 54, 62, 64, 67, 70-71, 73-76, 79, 81-82, 118-121, 123-124, 130, 132-134

Respondent's Exhibits (RX) 1-31, 33

Factual Background[6]

Respondent is a law firm practicing primarily in the default of secured loans. Its clients are mainly banks and servicers of loans. It provides legal support to those creditor clients by enforcing their security interests when consumer real estate mortgages or auto loans go into bankruptcy or default. When a debtor goes bankrupt, any secured creditor must file its proof of claim (POC) with the bankruptcy court within 90 days. However, the filing of a POC is technically not a legal act and need not be done by an attorney.

National Bankruptcy Services (NBS) is a limited liability corporation. It has a contract with Respondent to do all the administrative tasks that do not require a lawyer in support of the legal work Respondent does for its clients. NBS has a technology assisted process to gather and assemble documents. NBS and Respondent are housed in the same building and Respondent has lawyers that oversee the work NBS does.

NBS also contracts directly with some of its own clients and will refer the legal work out. Those referrals are sometimes to Respondent and sometimes to other law firms around the country. Respondent is not licensed everywhere and NBS does not work exclusively with Respondent.

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[5] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited.
[6] The parties agreed as to the general background. Tr 61.

The real focus of NBS is bankruptcy and secured creditors must file their proofs of claims between the filing of the bankruptcy and the arrival of the bar date. When creditor clients get a notice of a bankruptcy filing, they assemble information and make a referral to either Respondent or NBS. NBS then gets the paperwork ready and assembles the POC in three stages: login, assembly, and quality control. At that point, an attorney from Respondent does the final review and signs and files the POC. However, even then they do not sign as attorneys at law, but as agents in fact.

Complainant was hired and paid by NBS to be a login administrator and work on the claim in the initial stage, obtaining all required information for the file. Complainant complained that proofs of claim with incomplete and inaccurate information were being filed and in some cases those errors could be and had been to the detriment of the creditor. Eventually, Complainant was fired by NBS.

Issues in Dispute

Complainant maintains he engaged in protected activity under the Act when he communicated his concerns about the incomplete and inaccurate information in the proofs of claim. He also argues that Respondent retaliated against him for that protected activity when it fired him.

Respondent first submits that it was not Complainant's employer at all and while NBS might have been a properly named respondent, the current complaint should be dismissed. Respondent further suggests that Complainant's communications could not qualify as protected communication because he could not have reasonably believed there were any violations of the Act. Finally, Respondent argues that Complainant was fired for poor job performance totally unrelated to his communications about erroneous proofs of claim.

Law

The Act provides that:

> No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee … by reason of the fact that such employee … has--
>
> **(1)** provided, caused to be provided, or is about to provide or cause to be provided, information to the employer … relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;
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> …

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.[7]

A "'covered employee' means any individual performing tasks related to the offering or provision of a consumer financial product or service."[8] The term employee has been broadly interpreted in whistleblower statutes to include employers of a contractor of the covered employer.[9] Moreover, a company may be held liable the actions of its contractor under a common law agency analysis.[10]

The Consumer Financial Protection Bureau ("Bureau" or "CFPB") was created as part of the CFPA in Title X of the Dodd-Frank Act.[11] The Bureau's purpose is to enforce "Federal consumer financial law" for the purpose of ensuring access for consumers to markets for "consumer financial products and services," and ensuring that the markets are fair, transparent and competitive.[12] A consumer financial product or service includes extending credit and servicing loans and providing real estate settlement services.[13] "Federal consumer financial law" includes the provisions of Title X of the Dodd-Frank Act and the "enumerated consumer laws".[14]

A complainant has the burden of showing his protected activity was a contributing factor in the adverse action. If he can do so, the respondent can still avoid liability if it can show by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that behavior.[15] To break the chain of causation, the respondent must show the protected activity did not contribute in any way and was not a necessary link in a chain of events leading to adverse action.[16]

To have "reasonable belief" a whistleblower must actually believe in the unlawfulness of the employer's actions and that belief must be objectively reasonable.[17] "Objective reasonableness is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee."[18]

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[7] 12 U.S.C. § 5567(a).
[8] 12 U.S.C. § 5567(b).
[9] *See, e.g. Lawson v. FMR, LLC,* 134 S.Ct. 1158 (2014).
10 *See, e.g., Charles v. Profit Investment Management*, (ARB Dec. 16, 2011).
[11] 12 U.S.C § 5491.
[12] 12 U.S.C. § 5511.
[13] 12 U.S.C. § 5481(5), (15).
[14] 12 U.S.C. § 5481(14).
[15] 12 U.S.C. § 5567(c)(3).
[16] *Menendez v. Halliburton, Inc.*, (ARB Mar. 15, 2013).
[17] *Sylvester v. Parexel Int'l LLC*, (ARB May 25, 2011).
[18] *See, e.g., Lockheed Martin v. Adm. Review Bd., USDOL*, 717 F3d 1121 (10th Cir. June 4, 2013).

Evidence

***Claimant testified at hearing in pertinent part that*:**[19]

He is the Complainant in this case and first went to work for Respondent in October of 2009. They did POCs in bankruptcy proceedings for clients like Bank of America and Wells Fargo. He was hired as a login administrator and logged in files at the beginning of the POC process. He was basically checking the creditor's name, all financials, all loan-leveled documents, notes, and loan modifications.

RX-1 is his application to go to work for National Bankruptcy Services. He signed an Employee Acknowledgement. RX- 2 says that he read the confidentiality and ethics policy carefully and completely, has been given an opportunity to have any portion explained, and was provided with a copy of the confidentiality policy. He didn't understand it was his duty to abide forever under that confidentiality policy. Forever is a long time. He signed off on that on 13 Jan 10, but doesn't specifically remember signing it.

National Bankruptcy Services wrote his paychecks. The law firm was like a parent company. He actually had two e-mail addresses. One e-mail was NBS Default Services and another was BBW Law. He could use either e-mail to get anything that he needed. Everybody had two e-mails. The HR person for a long time was Kim Willis. She either got fired or left and then it was Sharon Goldstein and Susan Kennedy. He believes they worked for NBS. They worked at the same place and it was the same company.

When he first started, Russell was his immediate supervisor, but after Russell got fired, it was Kenya Johnson. After she was fired, it was Marco Villarreal. One level above Villarreal was Vice President Anthony Huysmans. At the end, it was Ronny Mattis, but he was only there for two months.

He was doing POCs and his specific job was to get information from clients for POCs in bankruptcy cases. In the beginning, they basically had to request all of the information from the client. They had access to the client's system. They had to send e-mails and also open up requests in a system called LPS, Lender Processing Services. Whatever was sent back was put into the POC.

That changed a little bit, but they still had to request information from the client. From October 2009 to June of 2012, they had to ask the clients for whatever they needed. After June of 2012, they became a full-service client. NBS acquired more Bank of America files and hired a lot more people just to work those files. They had access to a common database so that they wouldn't have to go ask for information, but they still couldn't find what was supposed to go into the POC. So, they had to still send e-mails.

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[19] Tr. 388-491; 515-537.

The data that they put into the system was used further down the road in bankruptcy matters where the debtor had claimed bankruptcy. The reason that they were filing POCs on behalf of clients in cases where the debtor had declared bankruptcy or was in bankruptcy proceedings was to make sure that the bankruptcy court people knew there was a mortgage.

The login process includes checking the claims register, which means going on PACER to look up actual POCs and check the financials and the final prepetition arrearage to see if this is the actual claim that needs to be filed. That's part of the process and they did it on every claim. They are checking to make sure that their client is the only one that's filing a POC on that note. They do that right up front by signing on to AACER, which is PACER for bankruptcy.

He never filed a POC, authorized the filing of a POC, or was the last person to review a claim before it was filed. He was never in a position to see what actually went into the POC at a filing stage. If something he put in was deleted, he wouldn't know about it, unless he actually went and looked at the POC. There are at least two levels of review after his login administration. It would be the NBS review team or the law firm review team that would delete things. If there was a Broker Price Opinion (BPO) that couldn't be verified in the review, he assumes that's where they would catch it and delete it.

At the end of 2011, he started realizing that there were some procedural issues. They didn't have a lot of procedures to request the information from client SLS. He has a lot of e-mails that he sent to Villarreal, asking about broken processes where they couldn't actually get the correct responses back from SLS. It was very difficult for them as login administrators to get all the information that they needed to put together a proper POC.

That would delay the filing of the claim. Some cases missed their bar date, but not many, because if they missed a bar date, Respondent would get fined by the client. If it was close to the bar date, they would file an "amended proof of claim," which meant they could file it to meet the bar date, and amend it later. That way they didn't miss the bar date. The problem was the amendment never happened.

They knowingly pushed false information along just to fake it so they had something in the POC.

In 2011 and early 2012, he went back and forth over many months with SLS and Villarreal trying to get the proper procedures. He started getting incorrect breakdowns. There were a whole bunch of files where the breakdown was incorrect and they had to send it back to SLS more than once to get the correct description of the file and the correct breakdowns.

He and Derrick Sims came across a file where SLS actually concocted the numbers. He sent the e-mail at CX-133. So in response to the pressure from SLS, clients started feeding them made up information. He brought that to the attention of his manager, Villareal and then to the attention of Huysmans. The e-mail was sent on 30 Mar 12, but they didn't do anything about it. He never heard any feedback on the e-mail that he sent on 30 Mar 12. It was the Roth file and the fees did go into the POC. Knowing it was wrong, he submitted it to the POC administrator. She filed it and then it went to QC. They filed it and then it went to the attorney, who signed off on it. It was filed with the courts. He thought it was fraudulent.

He started researching NBS and Respondent. He found information about Hillary Bonial and a case in Louisiana where she signed off on a POC, with incorrect information in it, and Wells Fargo got fined.

There were other proofs of claim he worked on that involved bogus information. There were so many he can't even name them. They were all cases where because of the time factor, they were basically accepting information from the clients that they knew was wrong and just pushing it through. He constantly complained to Huysmans.

Huysmans called a meeting in April of 2012 letting everyone know that they were going to become a full-service client of SLS. He told Huysmans at the meeting that they could not file these proofs of claims because they were not getting the correct information back from the client. Huysmans talked to him at the end of the meeting and he told him that there was no way that they could get more files from SLS because they hadn't fixed the processes that he'd been telling them about. He also said it was fraud to put that information into these proofs of claims. Huysmans said he would look into it, but nothing ever happened with that.

He had sent a lot of e-mails telling Villarreal that something was wrong with his computer starting in July of 2012. It got to where he could not do anything. He was paralyzed. They were saying that it was errors he was making, but the problem is not really errors because they were accepted. There were many files that they wanted him to enter. They just wanted them logged in and if there were errors being made, they didn't care.

In September of 2012, they hired a supervisor for SLS, Matthew Tomko. He kept having the same problems and they got worse and worse. So he bypassed Villarreal and went to Tomko and told him in the middle of October about the computer problems.

Tomko wanted to do a time study because he was working on new procedures. While Tomko was observing him as part of the time study on 31 Oct 12, Tomko saw the computer problems. At the same time, he told Tomko about the bogus information being passed along from the clients, that he had already complained about it, and that it was in violation of the credit act. Tomko said he would follow up with Villarreal.

In the meantime, he kept pushing the files through, even though they had bogus information. It was the final straw when he got written up on 7 Nov 12 for things that no one ever got written up or terminated for before. RX-23 and CX-73 are the same e-mail. One was sent to him and one was sent to Sims. It's the same exact thing that they were trying to write him up for, using the same e-mail. She asked Derrick why he didn't check for the current investor and told him to look out for that. It was the same e-mail she sent him, but Sims was never written up. He kept working processing proofs of claim into January.

Anyone could look in PACER to see whether the claim at 165 of RX-20 was or wasn't filed. The $100.00 could have been a part of something else and you don't know if the $100.00 was filed. Pages 164 through 230 of RX-20 were produced to him by Respondent in discovery in August of 2013. He has not gone online to check any of them. There's not enough identifying information to find anything.

He knew when he was making his complaints what ultimately ended up as the output of NBS going into PACER. It's part of login process and they check the claims register. Part of his process as a login administrator is to look at the final product after the attorney signs off. He didn't look at that particular file, but part of his process was to look at the claim register at POCs and their actual fees. That's how he was able to find this information by going to the claims registry on PACER, put it up to POC, and looking at the POC. He was going to the claims register to see cases that have already been signed off by the attorney and filed with the bankruptcy court. He was looking at the information he submitted. He knew for sure that was the same claim that went into PACER, because it goes by the same claim number.

CX-3 is an e-mail to his personal and business email addresses. It was from 12 Nov 12, five days after his performance review. CX-7 is an e-mail back from 8 Nov 12 to his personal e-mail address. He sent those for safekeeping in case they were deleted off of NBS's inbox. He did the same with CX-5. Some of the files he sent home had things from before February 2012.

He also sent a list of at least 11 loan numbers, all of which have personal identification information. It the stuff that's lined out and redacted on the filings in the proofs of claim. He sent the information home and printed some of it. He didn't realize at the time that violated the company's policy. It was a long time before he sent the e-mails and he didn't think about it one time. He was concerned about the homeowners.

He sent CX-8 home with actual screenshots off the client's system. He wasn't thinking about the policy against sending borrower's loan numbers home. CX-13 went to his personal e-mails as well, dating back to September of 2011. He also sent CX-35 and 36 to his home account. CX-36 went home and then he sent it from home back to work. The loans he provided in support of his complaint for Stephanie Russell to examine are ones he had mailed home, and then mailed back to his office. He sent the emails back to dhurst@bbw.com. Everyone had multiple e-mails.

He made his hotline call in January of 2013. The hotline call was a compliance complaint and a retaliation complaint. They went through a file and it had some incorrect stuff going into the POC. He said he told Villarreal about it, but Villarreal said not to worry about it and just put it in. That was the final straw before he called the hotline on 25 Jan 13. He told them Villarreal was retaliating against him for bringing up compliance issues. He told them that the numbers are not being verified by the client and they were just putting this information into the POCs. He was able to look at it and see that the information was wrong. The write up was retaliation against him based on the fact that they were trying to put pressure on him and other staff to try and produce more of the files.

RX-19 is a copy of his complaint from 25 Jan 13. It's pretty much accurate, but it was an hour long call, so it is summarized. He did say that the things he was reporting had been ongoing since October of 2011. He is not sure why RX-17 says he reported that he began to receive files with missing dates in them. He would have to be back at his system to see exactly why RX-17 says missing dates. He doesn't recall if he complained about missing dates.

He also complained that he was not allowed to submit complete POC packages, even after they got access to SLS, because a lot of the time, the loan servicers submitted mortgage loan files with incomplete information.

He complained that he was being retaliated against by Villareal constantly asking him to produce items for files and being written up for not having complete information in the POC package he was putting into package builder. His complaint was not that there was something being done to borrowers, but that Respondent was insisting he actually get complete files and he was unable to do so because the information wasn't available.

He has no idea about the overcharging involving principle and interest. He doesn't think they ever put anything about principle and interest into POCs. It was late charges, corporate events, and DTOs. He doesn't know if principle and interest go into a POC on a consumer mortgage. Thinking about it right now, he thinks that principle and interest do going into the proofs of claims, but that goes back to the late payments.

He doesn't think he ever mentioned anything about overcharging. It was wrong information that was being put into the POC. Some of the stuff could have been overcharging. There were some that were overcharges, but there were some that were just wrong amounts being put into POCs. It wasn't just that they were being overcharged. It was that the wrong information financial breakdowns were put into the POCs.

He would agree that if you're going to say what it's in a POC, it would be a good idea to look at the POC. It would be unreasonable, unfair, and unjust to make an accusation that there's something in it that ought not be in it, without looking at it.

A week later, Sharon Goldstein sent him an e-mail and said she wanted to follow-up with him about the compliance complaint the next day. She asked him to give her file numbers where they could go check and see if his accusation was true or not true. He met with her on 1 Feb 13 and gave her a lot of documents with examples of POCs where they had processed bogus information.

He went back into the system and actually saw what information was being filed with the bankruptcy court after it had been checked off by all of the quality people and the attorney. He actually went onto PACER and looked and saw what had actually been filed on all the POC files, but not the procedure files. He saw things that were filed with the bankruptcy court that he knew were wrong. That wasn't part of his job, but it was part of his investigation. The bad claims he found are the ones that he gave Goldstein. He gave her 29 or 30. There were more, but the ones

he gave her were a good representation of the things that were making him think that there was a problem not just with POCs, but also the procedures.

He wasn't part of the investigation into his complaint and he doesn't know what's right and what's wrong. He wrote down old e-mails back to 2011. So he either e-mailed to himself or printed out files even before he got the warning letter.

Three hours later, they put him on paid administrative leave. They didn't say why and they didn't put Villarreal on paid administrative leave. He stayed on paid administrative leave until 9 Feb 13, when Goldstein called him said that Bonial and Ryan McManus did an investigation and wanted to meet with him that same day at 12:30. He told them he had consulted with an attorney and they moved the meeting to Monday, 11 Feb 13.

He went to that meeting with Bonial, Goldstein, and McManus, who did all the talking. McManus said they had done an investigation, they didn't find anything, and he was fired. They didn't even really give a reason. They did give him some kind of document that talks about some previous files or something, but that's all it was. It wasn't a clear reason.

He hasn't worked in any job since. He has been getting some bad reviews when people call to check on his history. It's been hard for him to find work. He has been putting in applications because he was on unemployment for a long time. He was looking for a job similar to what he had been doing in the law field and things like that. He confined his job search to those kinds of jobs.

The bridges have been burned, so he wants some pay in lieu of reinstatement. He never figured out how much and really doesn't know how that works. He also wants monetary damages for lost compensation and also mental anguish. He has a prescription for Zoloft for anti-anxiety and depression. He also suffered a loss of reputation.

There were two complaints. CX-76 was published two days before he met with Goldstein. He actually read through the document and was able to find some things that he felt were in violation of the collection act. That was between the time that things were reported and two days later, when he met with her. He hadn't read it when he filed with the hotline, because it wasn't published yet. In the meeting on 11 Feb 13, he told her he had more information to submit for the investigation.

The Charles Roth former Bank of America file went through Countrywide to Bank of America. That POC was actually part of the financial collapse in 2008 and is what it refers to in CX-76. Page 80 of CX-76 is referring to Bank of New York Melon, in CX-2 and it means the series out in 2006. It was sold to Wall Street as Mortgage Bank Security. People started defaulting on these loans and Wall Street was holding pieces of paper. That's really how the financial collapse happened in 2008. CX-2 is the genesis of the horrible things that has started with Countrywide.

That didn't have anything to do with the hotline complaint, because he hadn't looked at it yet. However, it did have something to do with why he said what he did at the meeting and the fact that the meeting was a protected activity, also.

CX-81 is an e-mail between Natalie Warner, Vice President of Bank of America; Allie Harrelson, Chief Operating Officer for SLS; and a Senior Vice President of SLS. He first saw it in October of 2012. It was on Specialized Loan Services' H Drive. The company does audits for NBS. They hired through SLS to do their regulatory compliance orders and quality control orders. That goes back to the eradicated information that was in the statement of work. The audit says they found 163 errors in Bank of America files acquired by SLS that were reviewed in June 2012. That was another reason that he was concluding that there was a problem. It talks about home affordable foreclosure alternatives, which is a government program. CX-85 is the Bank of America contract that was signed after the independent foreclosure review in 2011. It's on the H Drive and anybody can go look up anything they want to. He read it in October of 2012 and because of that he was concerned about violations of statutes that enforce the Consumer Financial Protection Bureau.

CX-19 shows Villareal's performance review on 12 Nov 12 says he needs to turn frustration with others into positives and ensure completion of his work on time. Villarreal got mad at Tomko and him for going over his head about his computer issues. Villarreal was also mad about him blowing a whistle.

CX- 74 and 75 are cases, and where Bonial actually signed the POC for this particular debtor Dr. Chase Stewart. Judge Elizabeth Magner, the bankruptcy judge in New Orleans, went over these proofs of claim and found errors in them. Bonial is the person that signed the POC that attested to its validity that it's true and correct. That was in April or May of 2012. Because he read those, he was worried that because Bonial was also involved here, there would be something wrong going on.

Darronica Smith testified at hearing in pertinent part that:[20]

She has been a login administrator for SLS for two years. She talked to Respondent's counsel in the last couple of weeks about the hearing today, but he did not go over any of the questions or coach her on any answers. She had no bankruptcy experience coming to work for NBS. As a login administrator she logs in files and work impediments for SLS. The login administrator sets up impeds and creates a list that has to be corrected. Then they try to remove the impediments so the file can become eligible for a POC.

CX-71 is a welcome email she got from Huysmans on 5 Nov 12. Frank Saputo is in Quality Control Assurance. Tomko was the supervisor for SLS. Rashunda Adair and Sims were also login administrators. She got her training from Complainant and Sims. The goal was to do 20 logins per day, but she didn't feel pressured. She never received a POC manual when she was training.

She helped create the SLS manual for the login process. No one did any general bankruptcy training law regarding POCs and she does not know Bankruptcy Rule 911. She was logging in files without knowing any specific bankruptcy law. They weren't worried about bankruptcy laws. That's not what they were hired to do or even in the job description. When she came on to

[20] Tr. 178-223.

work, they kind of explained what was going on and expected Complainant to teach her. They gave her a checklist to follow. She and Adair sat with Sims and Complainant, who told them what to do.

From November 2012 to February 2013, the POC administrator assigned to SLS was Caitlin Hooper. The manager over SLS was Villarreal up until McManus took over towards the last month. The vice-president of SLS was Huysmans.

Between November 2012 and February 2013, she received emails about login procedures from Hooper with Villarreal cc'd on the email. She sent some back, too. CX-32 shows an email to Hooper on 21 Jan 13, asking her to respond to emails that are missing in files and meet in order to make it eligible. Villarreal was cc'd on the emails.

The files were a mess and she thought Villarreal knew they were a mess. She cc'd Villarreal with every message that she sent Hooper. She was never written up for errors made in login procedures. She asked Hooper to send her the emails so she would not make that mistake again. She didn't save the emails in a specific folder. When she was subpoenaed to court, she did go back and see if she could find emails, but didn't find any. She didn't delete anything.

BTS is Bankruptcy Tracking System and where they get the information from. A file open date in BTS is when they actually receive the file. An LIC date is when they actually log the file in. The bar date is when they need to file the POC. A POC send date is when it is actually sent to the court. A POC file date is when the POC is actually filed.

The top file on CX-19 page 169 has an open date of 2 Oct 12, a LIC date of 14 Nov 12, a bar date of 4 Feb 13, and the POC was sent on 30 Jan 13. There are four months between the bar date and the file open date. It had impediments open for corporate advance breakdown, an assignment, and payment history. It shows that Complainant opened that impediment in November 2013 and Hooper sent an email on 28 Jan 13. Impediments depend on requesting it from the client. They just hope they get it by the bar date. There is not an impediment for an RDOT or a note, which means that the RDOT and note were found at the login date and most likely sat in Package Builder since the log in date. POC admin probably didn't look at the RDOT note until it was time to be sent to Quality Control. That would have been two and a half months from the LIC date.

CX-21 is an email from Villarreal asking her to see if any impediments have come in by checking in pay per vision (PPV). Those impediments were open in December 2012 and the email is dated 9 Jan 13. He wanted her to find impediments that were open 37 days earlier. She was never written up for not following up on impediments in a timely fashion. There was a bar date, so there wasn't a specific time frame to work the impediments.

She was trained on logins, but not impediments, as far as a time frame. Complainant trained her. She guessed they were to follow up on impediments, but that's why she reached out to Hooper to be trained on things Complainant did not cover.

Adair quit, saying not everyone was carrying their weight and that a lot of the job was falling on the two of them. Lakeisha Starks was an attorney for NBS. She is not aware of any high turnover among attorneys at NBS. She recalls Huysmans speaking at a meeting when she first started and saying something about the procedures that they needed like a login process and that they are at risk if they don't do this right. He assigned Tomko to do that.

Complainant and Sims taught her. Hooper started sending her emails. She got with Adair and they put their own spin on it. It was on-the-job training. She knew how to log in a file. It was the different clients that Complainant was supposed to help her with. Tomko was working on procedures and had her working on procedures on how to log in a file.

They have charge-off loans and escrow loans, which take a little longer than a charge-off. Once she realized how to run the LIC reports and saw they had numbers to meet, she noticed their numbers were not going down. So, she and Adair got with another one of the employees and asked how they run the LIC report. They noticed that Complainant was only working charge-offs, which are the quicker loans to work. So, they got frustrated and talked to Villarreal about it. Complainant picked the charge-off loans that didn't require much work and gave her and Adair more complex loans to do.

They became familiar with the work Complainant was doing by the rise in impediments. He was improperly raising them. She was working those assignments. Once she saw that an item is already in there, she had to turn around and completely re-log in the file. That makes her job harder and longer because she has to go back and find things like corporate advance breakdowns. She started noticing some files that Complainant had as impediment. She didn't know if he was impeding this assignment or these notes because he knew that she was working those that day. It was just becoming a lot and that's when she complained to Villarreal about Complainant not carrying his weight. Since she had gone back to find them, he could have found them too, if he exerted the effort to do so. That was around January 2013.

CX-70 was to her, Jason Armstrong, Hooper, Complainant, Sims, Villarreal, Frank, and William Wheeler. It tells Complainant to work all new info charge-off loans on a daily basis in addition to his minimum of 20 claim logins for non-charge-off loans until they're done. Complainant was doing the easier files in November before this email was sent. No one was assigned to do only charge-offs.

She knows SLS Rep Melanie Gonzales. They usually send requests to her if they're having paper vision issues. She has worked Bank of America files for SLS. She didn't really look for payment history because she worked charge outs. She asked Complainant and Sims questions all the time about payment histories. She knows that it was on the S drive or a company application, but didn't know how much she needed. They all had computer problems with PPV. Sometimes it would go down.

She has had issues finding financial bank corporate advances and expense advances. That's when they sent an email to the loan adjustment specialist at SLS, Lauren Jessman. Most of the time, she gets the answer she's looking for. If it not, she just requests it again. That's rare, but she has sent the same request several times on one loan.

CX-39 is an e-mail that includes Senior Vice President William Wheeler and Bonial with the subject line that says, "Missing prior pay history." A prior pay history is the pay history that they need when they receive the file.

Thinking back from November 2012 to February 2013, she would send an e-mail to loan transfers and bankruptcy if she were missing prior service of pay histories. At that time, she had never seen a POC. They only did logins. Part of the login process is finding the actual name at the time of login. At the time of login, she had seen the creditor Bank of New York Mellon.

Acquired loan means there should be prior service history on the payment history and that SLS acquired their loans from another servicer. A note alliance is the endorsement on the note. It shows the chain of title of who owns the mortgages. A note endorsement is the stamp at the bottom that's going to the end investor. A new endorsement shows the loan was transferred. On CX-2 the "Countrywide Home Loans Endorse" means that it was transferred to Countrywide Bank. It went from Equity -– U.S. Equity Mortgage to Countrywide Banks from Countrywide Banks to Countrywide Home Loans, and then from Countrywide Home Loans to Bank.

Caitlin Hooper testified at hearing in pertinent part that:[21]
She is a real property bankruptcy administrator for Respondent. She moved to real property from consumer in July of 2012. She talked to Respondent's counsel before the hearing, but he did not coach her on any of her answers.

She was an SLS POC administrator, but doesn't recall the exact dates. She would run a report for Aljua (ph) files. Those would be ones without impediments and she would review them for actual eligibility. If they were not actually eligible due to a login impediment person not correctly doing their job, she would contact that individual, tell them to correct their mistakes or correct them herself, and proceed with her claims. She is one step removed from the input of the data. The login administrators get all the data and put it in. She would review the files to see if there were any impediments or any other problems before passing them along to the quality assurance team, which would review the files for accuracy before they went to the attorney for signing. That is all within NBS.

Within the last three years, she has prepared bankruptcy POCs for SLS. She cannot specifically recall encountering issues when preparing POCs that were former Bank of America files. She currently works with SLS preparing POCs. She was trained to perform her job as the SLS POC administrator, but was never provided a POC manual. From August 2012 to February 2013, the login administrators assigned to SLS were Sims, Complainant, Darronica Smith, and Adair. The job of a login administrator is to produce internal work for NBS.

Complainant didn't report to her, but to Villarreal. Her job was to verify the information put in the claim, based on what the login administrators had produced from going outside to get information. The three administrators were Complainant, Darronica, Sims, and Adair.

[21] Tr. 75-163; 377-386.

There are three other stages before it actually gets filed with the court as a POC. Tomko was the supervisor. The manager over SLS was Villarreal. The vice-president of the SLS was Huysmans and then McManus.

Between November 2012 and February 2013, she sent emails to login administrators about login procedures. CX-29 is an email she sent to Sims on information that needed to be followed up on. CX-73 are emails to Sims. On 27 Nov 12, she emailed "Derrick, this one didn't have an endorsed note and did not have a note of imped. I found the endorsed note and PPV. Please make sure it's checked on note and legal docs. Thank you." She also emailed "Derrick, the investor was not updated in BTS and I didn't see an email to be care referrals in the comments to add it to the lookup table. I went ahead and emailed be care referrals. Thank you." and "Derrick, can you please follow up on the impediments for this file? Our date is next week and since it's Southern Texas, we have to get it sent through earlier. Thank you."

She sent similar emails to Adair, Darronica Smith, and Complainant. Villarreal was cc'd on a lot, but not on all of these emails. He knew about login issues. She doesn't recall if she told Huysmans about login issues.

CX-119, page 169, has audit comments that say "Client was not properly notified by the POC admin CEH of the admission." and "The POC admin did not notify the client of the omitted $100.00". Page 181 has audit comments that say, "Admin did not advise client that we omitted $25.00 in fees" and "The POC admin did not advise the client of $25.00 omission."

She has seen the statement of work at CX-67 page 485, Section 4.73, but can't recall when. The last sentence says "NBS shall itemize for client any excluded fees."

She doesn't know the exact date when Complainant was terminated.

CX-22 is an email from Villarreal on 19 Feb 13. She does not think the email was needed because staff members weren't notifying their clients. She thinks the email was sent so a manager could inform his administrators about something that needed to be done.

RX-10 is a 7 Nov 12 email from her to Complainant pointing out that Complainant put an impediment on the file seeking a breakdown on a number and that she was able to find it pretty quickly on the override. RX-10 fell into the categories of something that wasn't received when it should have been. It was a $70 breakdown. She was asking why they couldn't find it.

By November of 2012, they had more access to the S drive and SLS information, which is where the breakdown was. That meant Complainant had not fully done his job as a login person and she had found information that should have been found when he viewed the file initially. The information could have been found by any login administrator who actually looked for it. By just raising an impediment instead of actually getting any information, Complainant can show more login numbers for the day, but then someone else has to retrieve the information for him. She was aware that Complainant was complaining a lot about having severe computer problems.

She would give a login or impediment person plenty of opportunity to correct their mistakes by just emailing them, but after a while, if it did not get better, she would start to copy management. The fact that emails were copied to Villarreal and Tomko shows her concern about Complainant's performance as a login administrator was escalating.

RX-11 is a 26 Oct 12 email that copies Villarreal and Tomko. It tells Complainant she had found the Recorded Deed of Trust in pay per view, which is an SLS document system by which they can go in and get documents. There was nothing in Package Builder, which the login administrator is loading into from his system. Building up Package Builder is what login administrators and then the next layer of POC administrators are doing. That's the package reviewed by NBS Quality Control. If the package has things that shouldn't be there, Quality Control can knock them out or send it back down to the next level.

Complainant had put in an impediment that meant they were missing something and asked for the collateral file. However, NBS already had the collateral file in pay per view back on 27 Dec 12, back in the SLS system. She cleared this impediment and made the file eligible to do a claim, which should have been done by Complainant in the first place. Then the claim could be sent for approval Quality Assurance.

Not everything that's in Package Builder ultimately ends up in the POC. Some things are not useable because they can't get proof or it's just something that's not necessary.

Login administrators should have understood that, because they have meetings and it's no mystery. There is a difference between POC and login. Login people gathering information might have an inkling of how the POC is done, but it's really the POC person that understands exactly what the claim entails. She would have expected Complainant to understand that everything that's in pay per view is not necessarily everything that is in a package.

After three years, Complainant should absolutely have known that not everything that goes into Package Builder makes it into the POC. She didn't know anyone who didn't know that. It would be unreasonable to claim that something that's in the POC, a BPO or in the Package Builder is also in the final POC without even looking at it.

RX-12 is from 5 Nov 12 and says "You logged this file in and there are no impediments on the file. It's an escrowing account though and there's been no CIT 339 put in Fiserv or escrow statement put in the Package Builder." A CIT 339 is a request for escrow analysis to be run. Fiserv is SLS's operating system. The login administrator should have asked for an escrow analysis by putting in a CIT 339. Complainant didn't do that and failed to do his job. That's why she copied Villarreal and Tomko. If Complainant had been a new employee, she would have not copied them, but given him a chance to get it right.

In RX-13 from 6 Nov 12, she told Complainant that there wasn't a payment history uploaded into the Package Builder. Since it was in PPV, Complainant could have done it, but didn't. It is imperative that every file has enough payment history. Complainant opened an impediment for something that was already in Package Builder that he could have easily seen if he just looked. It's his job to open up anything if it's not in the system and he was just pushing his work on someone down the line.

RX-16 is a memo that has to do with RX-15 and is talking about an applicable foreclosure action. A login administrator is a bankruptcy position and as a login administrator, Complainant didn't have anything with foreclosures that were unrelated to bankruptcy. He did have something to do with foreclosures that were asking the bankruptcy court for some relief. In such a case, all the administrator would have to do with the foreclosure would be to request invoices that have foreclosure and maybe also documents. There's direction on how to handle additional supporting documentation. The point of it is to get complete files. It's not really about how to get incomplete files and try to take advantage of borrowers. In RX-17, Complainant indicated he understood that.

RX-9 is a disciplinary report from 7 Nov 12. The specific reasons were (1) that Complainant had been called by Steve Cobb with SLS and never called back and (2) the deficiencies that she had brought to Complainant's attention.

Complainant did try to dispute what she said, but there was nothing to say once they found it in the system. The report says, "Complainant seemed uncertain that this was the process with regard to the contacting of foreclosure attorneys and documentation in BTS notes." BTS is the Bankruptcy Tracking System and is a proprietary software system of NBS. Complainant was informed that "failure to correct the performance deficiencies as listed above immediately and continuously throughout employee's employment will result in further disciplinary action up to and including termination of employment."

CX-5 is from 8 Nov 12 and Complainant sending some SLS examples to himself, including forwarding an email from 7 Feb 12. They included borrower identifying information that cannot be sent home in accordance with company policy. CX-6 and CX-7 are the same thing. CX-8 has screen shots from Fiserv that shows personal borrower information that Complainant was sending home. CX-13 also has personal borrower information that Complainant sent home in violation of company policy. Those are all terminable offenses.

RX-23 is an email from her to Complainant that points out a performance deficiency. The investor was not updated, Complainant should have requested it from the client, and the bar date was six days off. That showed poor performance by Complainant and she copied Villarreal on it.

RX-24 is a note to Villarreal that Adair had caught an error by Complainant and praising Adair for that. There was a whole month lost towards the bar date by Complainant's failure on that file. It shows another case where Adair caught Complainant requesting the wrong assignment and someone else had to cover for him.

RX-25 is from 18 Jan 13, one week before Complainant's hotline complaint. It was to Complainant and copied to Villarreal. It noted that Complainant didn't fully check the file, there were breakdowns missing, and she had to go back and complete work Complainant should have done. RX-26 is about a file that Complainant sent to her as a possible eligible, but Complainant had not reviewed the file to make sure that it was actually eligible. There was no payment history.

RX-27 is from 21 Jan 13 and also shows Complainant failed to upload a note to Package Builder, even though it was available the whole time and all he had to do was look in the system. It's pretty easy to catch and he should have caught that.

RX-28 is from 28 Jan 13, the very day of the Complainant's hotline complaint. She did not know at the time Complainant had made a hotline complaint. Complainant again failed to do his job and get information that was available to him to make sure the file was complete. Complainant had been working for Respondent longer than she had.

RX-29 is also from 28 Jan 13. Complainant sent an email to the client, but there's nothing in the comments indicating a response and there's no email to her, either. Complainant was to look for a response immediately or email them, because the bar date was only ten days away.

On 30 Mar 13, she told Complainant he had put the wrong information in the file and to open a CIT for the correct assignment. The next day, she had to tell Complainant to follow up on a bar date case that had nothing since an email in the payment history in November 2012.

CX-119, page 169 showed the POC was deficient to meet the bar date and a $100.00 corporate advance was omitted. That actually benefited the borrower. CX-119, page 181 shows the POC omitted $25.00 in fees, saying they were excessive in having more than one per month, but the borrower also got the benefit of that. There wasn't really a determination whether these charges were actually excessive, but they were kept out in the interest of caution. There is nothing about that file that has anything to do with overcharging a borrower or smuggling things into the POC.

CX-73 are emails to Sims from 10, 14, 19, and 24 November 2012. She did not copy the supervisor on all of them. They reflected poor performance. Sims did his job better than Complainant and she relied on Sims more to get information for her. Sims is still employed at NBS. She does not remember when Darronica Smith came on board, but she also sent emails to Smith in October and November of 2012. Smith's performance was better than Complainant's. She would expect to send emails to administrators when they are just starting. She doesn't have the emails she sent to Smith or Adair.

She doesn't recall sending an email similar to RX-31 to Adair or Smith. She doesn't recall sending an email similar to RX-10, 11, 23, 24, 25, 29, or 30 to Smith, Adair, or Sims.

She started training in real property in July of 2012. She has had occasional problems with PPV being slow. She never had to log in and out three times a day. That could affect production. A problem with PPV has nothing to do with overcharging borrowers. It does have to do with how many files you can do at a time.

On 1 Oct 12, Complainant asked DG Bankruptcy if they were having trouble accessing any applications. On 29 Oct 12, Villarreal asked about Complainant's wide array of problems that have caused issues with his productivity, including his computer connection. The computers seemed to be slow for most people.

RX-34 is from Tomko to William Wheeler at NBS on 2 Nov 12.

Since Adair and Darronica were newer, they were getting more emails from her, but the emails were more explaining how to do things rather than asking why they couldn't get it right. Complainant and Sims had been there and should have understood the job. Sims was the one that did better than Complainant. Complainant was even being outshined by the newer employees.

She first understood that Complainant might have made some sort of complaint about breaking rules or regulations when she got an email from Respondent's counsel, which was after Complainant had already been fired. She did not have anything to do with the choice of firing Complainant.

CX-22 has Alliance to Note. It's a separate page that's attached to the note endorsing it. It doesn't necessarily show a chain of titles who owns the note in the beginning to who owns it now. There could be several note alliances.

She has heard of "robo-signing", but doesn't know the exact definition. She doesn't know anything about Meter or Sjolander not signing stuff personally. No one told her anything about any late endorsements or note endorsements signed by Lori Reeder or Michelle Sjolander.

Hilary Bonial testified at hearing in pertinent part that:[22]

She spoke with Respondent's counsel about the case, but he didn't coach her on any questions. She has been a shareholder in Buckley Madole a little over a year or a year and a half. As the shareholder for bankruptcy, she is responsible for ensuring their bankruptcy operations work well. NBS provides the administrative services for bankruptcy in support of the law firm and she consults with them on their bankruptcy processes and procedures. NBS provides those administrative support services to Buckley Madole.

She did not know Complainant filed a retaliation complaint. She saw the complaint to the ethics hotline. CX-46 is the compliance complaint she saw. She considered it an ethics complaint, not a retaliation complaint. She directed Villarreal to conduct an investigation of Complainant's compliance complaint. She did not interview Villarreal regarding the compliance complaint or the retaliation complaint. She does not know whether or not McManus interviewed Villarreal.

She believes she was brought into it in the late afternoon of 25 Jan 14, the same date that the complaint was made. She was told there was a complaint to the ethics hotline. She handles ethics complaints. One of the H.R. representatives came to her office and said that a report had been made. She then went down to their office where she saw CX-46. She knew Complainant from

[22] Tr. 311-338.

walking through the offices and seeing him, but that was it. After she read the complaint they asked to get examples. Complainant was put on paid administrative leave following the receipt of the complaint and the initiation of the investigation.

She received the packet of emails that Complainant provided to Ms. Goldstein in response to their request for examples and gave those to Stephanie Gilliam with instructions to go through them and determine if they did have errors in the POC being filed. Gilliam was to report back to her, McManus, and H.R.

Gilliam came back and said her investigation showed that there weren't errors in the proofs of claims that were filed. The issues that she did find were that perhaps the logins weren't done correctly, but that any issues that might have been present at login ended up getting corrected either by the POC administrator who's drafting the claim, by Quality Control (QC), or by the attorney, so that none of them made it into the final document that got filed.

At that point, her involvement in the issue was over because she just wanted to know whether or not erroneous information was put in proofs of claim. Since Complainant was an employee of NBS she assumed NBS HR would be investigating and handling the matter from that point forward.

She is familiar with the Obasi case. It ended up not being about necessarily the breakdowns on the fees and costs in the claims. There were some things about the loan documents that were litigated and then some other matters having to do with the claim. It did not apply to what they were asking the login administrators to do at that time.

Stephanie Gilliam testified at hearing in pertinent part that:[23]

She talked to Respondent's counsel about this hearing, but he didn't coach her on any of the answers. She has been the supervisor over the QC and Compliance Department at NBS for three or four years. Before that, she was a supervisor over Workout Services. Before working at NBS she worked as an administrative assistant and also did medical billing. She had no previous bankruptcy experience before working for NBS. She did get training to be a QC supervisor.

As a QC supervisor, she manages the QC Department. They do compliance and data review of proofs of claims as well as amendments and various other products. She is also involved in audits and procedure updates.

She does QC on all clients for NBS. They have general procedures and then some policy documents and job aids for specific clients, but she would not say that there are specific procedures for each and every single client, because that would be a lot. They have general procedures that apply to each individual client and then they have specific procedures for some of the bigger clients.

An SLS POC checklist is used whenever they are preparing a POC.

[23] Tr. 224-310.

She knows of Melanie Gonzales from SLS and has gotten emails from her, but doesn't know her personally. She has seen the name Vladimir Giorgio, but is less familiar with that person. She knows SLS Manager Melissa Masteri. She thinks they were the SLS contacts that login administrators communicated with on a daily basis.

She has not personally ever contacted clients' SLS to request a financial breakdown. When they QC the file, they review the system of record and a backup that may have been provided by the client. They are relying upon the client's system of record and any backup that either they provided or they obtained, such as invoices, breakdowns, or things of that nature.

To determine if a foreclosure fee or cost is valid, they first look in the system of record and see if there was a prior foreclosure or not. Then they look to see if there are corporate advances for foreclosure fees and costs billed to the system of record. Depending on what those look like, they might need invoices or a further breakdown. It depends upon how they're classified in the system of record. To decide if a late charge is valid, they first need to determine how they are assessed in the system of record. Once they do that, they would review the system of record for those charges and validate them through the payment history and the terms of the note as well. Attorney's fees and costs are itemized. In February of 2013, she had a login password for SLS applications, SLS PPV, and SLS file search.

She did an audit on some of the files that were submitted in Complainant's compliance complaint. She was not informed of the nature of Complainant's complaint. She was tasked to simply go out and find out whether there was anything wrong with these files. She audited the claim and looked at the plans, docket, all the documents, procedures, and policies.

The audit took about a week. She used the client system of record, which is Fiserv. There is also PPV, and other systems that go along with Fiserv, but Fiserv is the client's system of record. That's where the accounting on all the loans is. The files were all active in Fiserv. She also used the client's S drive; the Bankruptcy Tracking System; Package Builder; the docket; and the claims register and claims that were filed on the claims register. She didn't interview any login or POC administrators or Villarreal for this audit. CX-45 is a summary of audit findings, dated Friday 8 Feb 13 at 12:42 p.m. It is just a summary of the audit findings. She believes that she had finished prior, but doesn't know the exact time. She thinks it was the evening prior.

There were no inaccuracies with the filed claims. Many of the loans that were served claims had not been filed. Cases were dismissed. She found that files were not logged in appropriately, were not logged in timely, impediments were not followed up on, impediments were incorrectly missed or omitted, documents were missing, but later found by others, and documentation was inadequate. Company policy is that files should be logged in within 48 hours of file opening and that impediments should be followed up on once a week. Everyone should know that policy.

CX-119 is one of the files she reviewed in the audit. She is not sure why the loan number is blank. She audited each file that was submitted on the spreadsheet.

On page 3 of CX-2, line item 3 shows attorney fees of $1,400. CX-72 shows foreclosure attorney fees of $1,400, but also shows two sets of attorney fees totaling $1,200. The POC says the attorney fee is $1,400. CX-118 shows the amount to be cured of $13,625.00. CX-2 shows amount necessary to cure default of $15,840.61. The claim is about $2,000 higher than the plan. CX-72 shows filing fees on the first page of $166.00 and on the back page $200.00. That is a discrepancy.

CX-118 shows $2,000 less in the POC. The plan was filed 12 Mar 12. The POC was filed 30 May 12. The debtors took down the number before they even saw the POC. RX-33 was filed 16 Aug 12, after the POC was filed. They are essentially saying that the $15,840.61 is what is going to be in the plan. Once they saw the POC they agreed and had their plan changed to conform to that POC.

To get the POC and the plan order, Complainant would have to go on PACER. If he had looked there, he would have seen the conforming document. Complainant presented as an example a plan that wasn't a final plan, was filed before the POC, and didn't select the actual numbers with which they agreed. In other words, Complainant put in anything that he thinks will help his claim, but left out anything that he thought might hurt him.

RX-20 page 164 is the same email she talked about in Complainant's exhibits. Page 165 is the spreadsheet. What came to her was the group following page 165 in RX- 20 following not so much her summaries, but a stack of emails, and PDFs. She created the loan list from those numbers.

At the top of page 166 of RX-20 is one with a circle on it that ties back to the one on the spreadsheet. It is the Roth one. Complainant said there are no comments on it, but that's not exactly true. The POC was filed before they had full access to Fiserv, so whatever was being done at that time would have to be done off screen shots and the breakdowns. On page 197 down at the bottom, it asks for an itemization of the $1,646. She couldn't find anywhere in the file the piece of paper that Complainant showed her with this differing amount. She doesn't know if that's in the client's system of record or not. It's not in Package Builder.

The three-page email from page 166 to 167 is about a Broker Price Opinion (BPO). The BPO in this case was for $100.00. There was back and forth and they decided that since that's what they had, they would go with it and they did not charge that borrower for it. It is a summary answering the emails and not a complete timeline. That $100.00 never got charged to the borrower in a POC. Someone who really wanted to have a reasonable, good faith, objective, and reasonable belief, could have simply gone onto PACER, looked at the POC and concluded the $100.00 wasn't in there. That's what she did.

No POC was even filed in this case on page 165. Anyone could have gone on PACER and figured that out. Plus, according to BTS, emails provided permission to omit some of the charges in question. Page 30 has another loan where the POC has not been filed and therefore no amounts have been either omitted or included. That would have been obvious from an easier review of the PACER docket. Checking that with Respondent's internal system would be even easier.

Page 172 is number 2 and is also a case where no POC was filed.

Page 175 is number 4, and page 177 is her summary of the audit. She concluded that the POC was filed accurately so there were no findings. The file was not logged in timely and there were no notes in BTS to denote any issues with the investor name. When the file was logged in, the fact that the login administrator, Complainant, could not update the investor name was not documented anywhere. It appeared that he just didn't do it, but seems like that he's trying to say he emailed referrals about it, but it really doesn't tell her anything. That impediment ultimately cleared when Hooper reviewed it 2 Jan 13.

Her audit of Number 5 showed no findings regarding the POC. She did note that the file was logged in by Complainant on 23 Oct 12 with an impediment for the recorded deed, RDOT, endorsed note assignment, and payment history. All of those documents that he opened an impediment for were all imaged in the related file, and were available. The impediment didn't need to be opened. The bar date was approaching on 29 Oct 12 and so Hooper reviewed the file and was able to easily locate all the necessary documents and cleared the impediments. Even though Complainant alleged that somehow a borrower was being taken, her audit revealed nothing of that nature.

On number 6 she found the POC administrator omitted a $25.00 charge since there was no due diligence to ensure it was not excessive.

Number 7 was an email from Complainant to Hooper and copied to Villarreal. It talks about issues with taxes advanced. She couldn't find any problem with that. Complainant's impediment was not done properly, but there were no problems with overcharges.

Number 9 has an email from Complainant on 25 Jan 13 suggesting there must be something wrong with payment history, but the case was dismissed so no claim was filed. Complainant could have found out if the POC was filed.

Number 10 is a file logged in 1 Nov 12. There's no payment history uploaded. They also found that there was a grant deed impediment on the file, but that was already in Package Builders so the impediment was wrong. She found no problems related to borrowers' rights. The claim was accurate.

Number 12 at page 200 had no problem with misinformation or overcharging and the case was dismissed, so no claim was filed. The same was true of 13 and 14.

Number 16 at page 208 is an email from Complainant to Ryan Pfleger saying, "When the file gets set up in Fiserv on a majority of the files, some corporate advances are blank. Why is that?" Pfleger explained that they hadn't been incurred yet. That was a dumb answer. The fee was actually paid in 2009 and so it was incurred. Complainant was concerned about charging $115, but all he had to do was go look on the POC and see if it was actually charged. These are public records that anybody could check.

There was no POC filed on 17 and 18, so there could be no potential of any violation of any laws. Number 19 from page 210 has an email between SLS and Complainant and includes two files for three loan numbers. The files were closed and no claim was filed. She's really not sure what the email is trying to say.

CX-86 concerns an email that's dated 7 Feb 12. It was sent before they had full system access to SLS and talks about files coming over on LPS with incorrect breakdowns. It then went from Complainant's home address back to his work address on 31 Jan 13 and lists five files that are actually more than a year old. That whole group with one exception is all about an incorrect breakdown provided from NBS. She looked at those and didn't find any errors with the POCs. Some of those did not even have proofs of claims filed on them. Based on the system of record and the information provided, the claims were all accurate.

RX-20 is an email that Complainant forwarded to Goldstein on Friday, 1 Feb 11 talking about BPO charges going back and forth. The bottom of page 219 in RX-20 asks if the $100.00 or $115.00 is anything other than a BPO. They go back and forth and ultimately Complainant says there are BPOs included without enough information. She reviewed this particular file. It would not have even been an issue post-full access, but was raised back in March of 2011. She determined it never happened and there was never anything charged on it.

CX-67 page 490 says POCs will require supportive information pursuant to general bankruptcy law and NBS should not include any fee, cost, charge, corporate advance, service in advance, any claim in litigation referral without attaching proper support and documentation to establish each individual charge in the court and jurisdictional requirements.

CX-8 page 7 is an email Sims sent to Melissa saying that they often come across certain BPO charges, most commonly $100 or $115. When they requested this information, they're routinely returned a BPO and he's never seen a month where there's not a BPO. That seems reasonable to her.

They got access to the full system around the middle of 2012. Before that, they had to count on SLS to provide descriptions in a system of record that they did have access to. In that system of record, $100.00 or $115.00 charges are usually classified as BPO. Even though they discussed just assuming those charges were BPOs to save time doesn't mean they actually adopted that procedure. Page 2 indicates Anthony Fursberg, who was a SLS vice-president approved that shortcut. That process was never approved by compliance and legal and was not adopted.

CX-72 is the Roth breakdown. If she saw the front and back pages were different, she would have wanted more information. When the POC was done, the front page was the only one. The back was blank. If she saw only the front side of the page and the POC, she would have no reason to be concerned about it. The dollar amounts on the two pages match. It's the itemization and a discrepancy with the $200.00.

She was given a whole bunch of files to audit. They all related to Complainant. She was told Complainant was thinking they had a real problem with the way they were doing stuff and should scrub down the files to see what she thinks. After she did the scrub down, she could not see how Complainant could have reason to believe that they were breaking some sort of rule, doing something wrong, or filing fraudulent proofs of claim.

Ryan McManus testified at hearing in pertinent part that:[24]

He is employed by NBS. He was put over on the SLS team in late 2012 or the very beginning of 2013. RX-18 is an e-mail to him from Villarreal in response to a discussion they had about a forced ranking of the staff. In January, there were discussions at the executive level about an upcoming reduction in workforce and they were asked to prepare for reducing staff. By way of doing that, he asked management to rank the employees in order of value in terms of work performance and work product. He didn't tell Villarreal why he needed the rankings.

The second page of RX-18 is the forced ranking that Villarreal provided. Complainant is the very last person on that list, 17th out of 17. Of all the login administrators, Complainant fell last. Sims was the best login administrator. Veronica Smith, who had been there only three months, was third from the bottom. They both still work for Respondent. Complainant had been there more than three years and was already outranked by people that had only been there for three months. He had no input on RX-18; Villarreal made the decision on the rankings.

He was contacted by Susan Kennedy and Goldstein from HR in regards to Complainant's complaint. They showed him the hotline complaint, RX-19. He never talked to Villarreal about it. He immediately reached out to Bonial, who is his counterpart with the law firm and discussed the situation with her. Upon his recommendation, they instigated a review by the law firm of files that Complainant had provided and requested that Complainant be put on paid leave until the completion of the review.

He didn't interview anybody about the complaint and had no input into the investigation, but he looked at the actual investigation final report. Based on Russell's review of all the loans that were supplied by Complainant, they found all of the complaints by Complainant to be baseless. They terminated Complainant because of a combination of Complainant's work performance and the fact that Complainant violated corporate policy by sending personal information (PII) to a non-corporate account.

CX-62 talks about Complainant's poor performance but doesn't mention PII. Complainant's termination was not part of a reduction in force. After Complainant filed his hotline complaint, they did an audit and didn't find anything wrong, but did see serious problems with what Complainant was doing. After a performance review, Complainant was terminated for not doing a good job on the files and also the PII problems. He already had prior knowledge of issues with Complainant's work product. At that point, the decision was left to him and he felt it best for the company to terminate Complainant.

[24] Tr. 492-508.

Had Complainant not called the hotline and had they never done the audit, Complainant would have been terminated in the reduction in workforce that came shortly thereafter. Because they terminated Complainant, they were able to reduce the workforce by one. RX-22 shows actual reduction, which wasn't part of the thought process when the fired Complainant.

Sharon Goldstein testified at hearing in pertinent part that:[25]

She has been in human resources for about 30 years. She worked as a human resources generalist for NBS for about three and a half years. She discussed the case with Respondent's counsel in the last couple of weeks, but he did not coach her on any answers.

With NBS, she handled benefits administration, employee relations, some payroll, and any kind of HR issue that came along. She recalls Complainant from NBS. She doesn't recall that Complainant filed a compliance complaint and retaliation complaint against Villarreal on 25 Jan 13.

She doesn't recall CX-46, but does recall that Complainant provided a lot of emails when he made the ethics complaint on the anonymous complaint phone system at NBS. She remembers that when they started the investigation, Complainant provided several documents, emails, and so forth.

They did meet to discuss his compliance complaint and retaliation complaint. Complainant said he had more documents that he had not submitted and that Respondent was violating many consumer protection laws, but can't recall any specific statutes by name.

She doesn't remember the first person she told about Complainant's complaint. She knows they talked to Bonial and spoke to McManus. Complainant was placed on paid administrative leave at that time.

They conducted an investigation of the compliance complaint. She doesn't recall interviewing Villarreal and doesn't think he was still employed at NBS at that time. She did not work on the investigation. She remembers calling Complainant to tell him that she had been informed the investigation was complete. She had nothing to do with the decision to terminate Complainant.

Paul Spicker testified at hearing in pertinent part that:[26]
He has been Director of Human Resources for NBS since 11 Feb 13. He is responsible for overseeing various aspects of human resources, including payroll, benefits, recruiting, and employee-relations issues. He is either directly meeting with managers, employees, or staff to ensure that those duties are carried out.

RX-22 is a listing of employees that they had to fire for the reduction in force. It shows none were rehired at the time it was prepared. The last individual on the list was rehired about two weeks ago. He is the VP of Sales and the only rehire.

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[25] Tr. 163-178.
[26] Tr. 510-515.

He played no role in the complaint Complainant filed on 15 Jan 13. He saw it the summer of 2014. He never interviewed Villarreal about a compliance complaint or a retaliation complaint. Smith and Sims are still employed for NBS.

Respondent's Records state in pertinent part that:[27]

In January 2011, Kenya Johnson completed Complainant's performance appraisal and indicated that he consistently met the expectations of a fully qualified and experienced employee. She characterized him as professional, accurate, thorough, compliant, and dependable. She did note that he needed to learn more about things beyond login and impediments. Complainant's July 2012 appraisal by Villarreal has largely the same comments, although he downgraded Complainant for organization, due in part to challenges created by the daily changes for SLS. He noted Complainant needed to improve in the area of making sure new files were logged in daily.

On 7 Nov 12, Complainant's supervisor, Tomko, verbally counseled Complainant for failing to return a client's call and for falling short in performance. He cited instances where Complainant had failed to properly login claims and missed applying necessary impediments. Complainant refused to acknowledge the counseling in writing.

On 15 Jan 13, Villarreal submitted his ranking of 17 employees involved in login and POCs. Complainant was ranked 17th out of 17.

On 25 Jan 13, Complainant filed his internal complaint, complaining that procedural and administrative problems were leading to incomplete and incorrect information being included in proofs of claim. He stated that he was being pressured to complete files, even though the data was incomplete. He noted that he had reported the problem to Villarreal, but that just resulted in Villarreal disciplining him with a formal counseling on 7 Nov 12.

On 8 Feb 13, Respondent terminated Complainant. It noted Complainant had prior disciplinary actions on 7 Feb 12 and 7 Nov 12 and specifically cited various mistakes made by Complainant on 15 Jan 13, 21 Jan 13, and 28 Jan 13.

Discussion

Employee Status

Respondent argues that the complaint against it should be dismissed, since Complainant worked not for it, but for NBS. The evidence is clear that, at the very least, NBS was a contractor of Respondent. Moreover, it is equally clear that Complainant was hired and fired in direct furtherance of NBS' contract with Respondent. Thus, under a reasonable interpretation of the Act and implementing statutes, Respondent is properly named in this action and the complaint is not dismissed on those grounds.

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[27] CX-42, 135; RX-9, 14, 18, 19.

Protected Activity

The central question is whether Complainant communicated to Respondent his concerns about, objections to, or refusal to engage in activities he reasonably believed fell within the protections of the Act. His demeanor as a witness led me to conclude that he was generally candid and convinced that what he was saying was true. However, at the same time, I was not led to conclude that that he fully understood what he was saying, but instead focused on and extrapolated from very small details, with no appreciation for their significance or relevance in the full context of his allegations.

Indeed, Respondent's primary argument in that regard is that Complainant could not have reasonably believed there was a problem with documents that were actually filed, because there were multiple steps after his involvement to amend and edit the packages. Moreover, Respondent submits that Complainant could have easily discovered for himself that there were no problems by the time the packages were filed. Complainant is unassisted by any presumptions on this issue. Respondent need not prove Complainant was unreasonable. Complainant must show that it is more likely than not that he was reasonable.

The weight of the evidence fails to do so. Hooper and Gilliam's testimony was very probative and it was clear they understood the login and proof of claim process much more clearly than Complainant. Their testimony clearly established that there were no activities that fell actually within the coverage of the Act. However, they were also very credible in their assessment that no reasonable employee in Complainant's position could have thought there was a problem. Indeed, the consensus of the witnesses who had a basis from which to draw an opinion was that Complainant did not understand what he was supposed to do.

The only evidence to the contrary are the performance appraisals and Complainant's own testimony. The appraisals appear to be perfunctory square fillers and even at that hint at the problems he was having. In his testimony, he explained his complaint was that he was being retaliated against by Villarreal constantly asking him to produce items for files and being written up for not having complete information in the proof of claim packages. He clarified that his complaint was not that there was something being done to borrowers, but that Respondent was insisting he actually get complete files and he was unable to do so because the information wasn't available. He also conceded he had no idea about overcharging involving principle and interest and wasn't even sure if principle and interest go into a proof of claim on a consumer mortgage. His testimony actually raised more questions than it answered about the reasonableness of his beliefs.

Since the reasonable person standard takes into account knowledge, training, and experience, I considered whether Complainant was not unreasonable, but simply undertrained and inexperienced. However, the testimony of his coworkers established that people with less training and experience were not having nearly the difficulties that Complainant seemed to have. Indeed the fact that he was ranked last in a group that included employees much junior to him indicate that the disconnect between Complainant's perception and reality was not attributable to a lack of experience, guidance, or training.

Complainant failed to carry his burden and establish his alleged protected communications were based on reasonable belief. In fact, the weight of the evidence is that they were based on unreasonable and faulty conclusions, even if honestly held.[28]

The Complaint is **DISMISSED.**

ORDERED this 31st day of August, 2015, at Covington, Louisiana**.**

PATRICK M. ROSENOW
Administrative Law Judge

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[28] However, if the communications were protected activity the record establishes by clear and convincing evidence that Complainant would have been fired, even in the absence of those complaints. The testimony of the witnesses show he was a very poor performer and he stood dead last in a ranking to identify which employee should be fired in a reduction in force that was planned long before his complaint. While Complainant suggested that Villarreal was the recipient of some of his complaints, even assuming that is true, the overwhelming consensus from everyone else was that Complainant was a very poor performer.

There was significant discussion about the role played by Respondent's discovery of Complainant's misuse of personal information. Complainant tried to minimize the issue by testifying that although he had a copy of the confidentiality policy, he didn't understand he had to comply with it forever, because forever is a long time. Nonetheless, he clearly violated the policy, which was a terminable offense. However, Respondent did not realize he had violated the policy until he filed his internal complaint and it saw the documents he offered to support his allegations.

So, while Complainant would have been fired on 23 May 13 in the RIF had he never filed his complaint, the acceleration of that termination to 8 Feb 13 was a consequence of Respondent's discovery of his misuse or personal information. That discovery was factually tied to his complaint, albeit unrelated to the substantive nature of the complaint. However given the chain of events test that currently applies to the causation analysis, the complaint Complainant filed, if it qualified as a protected activity, would be the cause of the earlier firing and Complainant would be entitled to relief for that firing.

In that event, I would use Complainant's 2012 wages (RX-21) divided by 12 ($2747.27) as a baseline and order Respondent to pay Complainant 2.5 times that amount ($6868.17) to compensate him for the acceleration of his termination by that many months.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1985.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1985.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1985.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points

and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1985.109(e) and 1985.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1985.110(b).