

Justices To Hear Tipster's Case To Revive \$1M Retaliation Win



By [Nate Beck](#) · [Listen to article](#)

Law360 (May 1, 2023, 2:30 PM EDT) -- The [U.S. Supreme Court](#) on Monday agreed to hear a case from a UBS tipster who argued the Second Circuit wrongly voided a nearly \$1 million award the former bank employee won after a jury in 2017 found his whistleblowing contributed to his firing.

The justices said in a Monday order they would take on the case of Trevor Murray, who appealed an [August Second Circuit ruling](#) stripping him of damages won in a jury trial that found UBS violated anti-retaliation provisions of the Sarbanes-Oxley Act.

Murray first sued UBS in 2014, arguing two UBS trading desk leaders urged him to alter official reports he authored to support their business strategies, in an example of influence outlawed by federal regulators. After Murray reported the pressure to his boss in 2012, the bank fired him.



The justices will take up the case of a former bank employee who appealed a Second Circuit ruling stripping him of damages won in a jury trial that found UBS violated anti-retaliation provisions of the Sarbanes-Oxley Act. (AP Photo/Michael Probst)

Robert L. Herbst, an attorney for Murray, told Law360 Monday that the Second Circuit's decision overturning his lower court win "flies in the face" of a framework long ago established by Congress to govern how whistleblower trials work. In his January petition to the Supreme Court, Murray argued the Second Circuit wrongly required him to show UBS intended to retaliate against his whistleblowing by firing him.

"We look forward to arguing this case on the merits, and advancing our contention that the Second Circuit's decision should be reversed," Herbst said.

UBS, through a spokesperson, told Law360 Monday that it expects the Supreme Court to uphold the Second Circuit decision.

Murray told the Supreme Court that the Second Circuit ignored rulings from four other appeals courts that each found whistleblowers under Sarbanes-Oxley don't need to prove their employers' intent to win on retaliation claims. Under that standard, employers can only win if they show evidence that they would have taken adverse action against an employee anyway.

The Sarbanes-Oxley Act prohibits publicly traded companies from retaliating against employees who have reported what they reasonably believe to be acts of criminal fraud or securities law violations.

The Second Circuit's decision came after a New York federal judge in 2017 denied UBS summary judgment by finding Murray had presented enough evidence to show that his whistleblowing at least contributed to his termination. A jury later agreed and found in Murray's favor.

UBS claimed that the bank eliminated Murray's position in a round of layoffs after revenue dipped in 2011.

In a March brief to the Supreme Court, [UBS argued Murray's actions reporting pressure to change](#) his work insulated him from termination for a period of time. The bank had already decided he should be let go before firing him in February 2012, UBS claimed.

UBS argued in March that justices shouldn't take the case because the Second Circuit also had problems with the trial court's instructions to the jury. A trial judge told the jury that a former employee only needed to show his protected whistleblower activity "tended to affect in a way" an employer's action.

Patrick J. Walsh, another attorney for Murray, told Law360 Monday that restoring the framework Congress set up for litigating whistleblower claims would secure Murray his rights after a lengthy case.

"Trevor Murray has sought to vindicate his rights for more than a decade now, beating back numerous legal challenges and winning a significant jury verdict," Walsh said. "Congress drafted Sarbanes-Oxley to best assure that the rights of financial whistleblowers and the integrity of financial markets are vigorously protected."

Murray is represented by Robert L. Herbst and Benjamin J. Ashmore Sr. of [Herbst Law PLLC](#), Robert B. Stulberg and Patrick J. Walsh of [Stulberg & Walsh LLP](#) and Scott A. Korenbaum.

UBS is represented by Gabrielle Levin, Thomas G. Hungar and Andrew G.I. Kilberg of [Gibson Dunn & Crutcher LLP](#).

This case is Murray v. UBS Securities LLC et al., case number [22-660](#), in the U.S. Supreme Court.

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Case Information

Case Title
Trevor Murray, Petitioner v. UBS Securities, LLC, et al.

Case Number
[22-660](#)

Court
Supreme Court

Nature of Suit
3790 LABOR LAWS-Other Litigation

Date Filed
January 18, 2023

- Law Firms**
- [Gibson Dunn](#)
 - [Herbst Law PLLC](#)
 - [Stulberg & Walsh](#)

- Government Agencies**
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