

U.K. executives use whistle-blower law intended for employees

By James Lumley
Bloomberg News

LONDON: Cantor Fitzgerald says it refused to pay the former head of a British trading unit millions of dollars in incentives because he had quit. Lewis Findlay, the former head, says he was pushed out for complaining about business practices, and he is using a whistle-blower law to sue for \$30 million.

The lawsuit is one of at least 10 in London courts involving executives earning six-figure salaries who are suing under legislation designed to protect employees who raise workplace concerns about illegal or dangerous behavior.

It's an effective way for "stale, pale males" to win big damages after unfavorable judgments on labor claims, said Tim Leaver, a lawyer at Herbert Smith, one of the biggest corporate litigation firms in Britain. While most wrongful dismissal damages are capped at £60,000, or \$119,000, employment tribunals can award unlimited amounts in whistle-blower cases.

"For some senior employees, particularly in finance, £60,000 is a drop in the ocean and could rapidly get eaten up by legal fees, so claimant lawyers can try to bolster their client's complaints with whistle-blower allegations," said Leaver, who works in the London office of Herbert Smith.

Paul Daniels, a lawyer at Russell Jones & Walker, who is representing workers in several whistle-blower cases, including Findlay, the former Cantor Fitzgerald executive, said, "There are more cases going on at the moment than I have ever seen." Most cases settle before reaching trial, he added.

Daniel Naftalin, a lawyer who represents workers, said that because of the unlimited damages, employers see "the tactic as akin to blackmail."

"I have two cases on at the moment that I know, when push comes to shove, will settle," said Naftalin, a lawyer at Mishcon de Reya, which also represents Heather Mills in her divorce battle against Paul McCartney, the former Beatle.

In 1999 Britain introduced the Public Interest Disclosure Act, which barred companies from punishing employees who raised concerns about illegal or unsafe practices. The legislation was a reaction to transport disasters in the late 1980s and early 1990s that had resulted in the deaths of hundreds of people.

The law has been used as much by executives seeking to recoup lost bonuses as blue-collar workers uncovering hazardous conditions, some lawyers say. GLG Capital Partners settled a case last month by a hedge fund manager just before trial, and Nomura International faces a lawsuit filed by a former bond salesman who says he uncovered securities violations.

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Richard Brown, an attorney for Nomura, would not discuss Piero Burrigato's allegations but vowed that the company would present a "staunch defense." The head of human resources at Nomura, Stephen Sidebottom, said the company had clear procedures to ensure that allegations of malpractice are brought to the attention of management.

Findlay, 46, has already received £1 million from Cantor, which is based in New York, in a settlement of a separate London High Court suit over his right to shares in the spread-betting business he managed. He has given only the briefest outline of the allegations behind his \$30 million claim in a whistle-blower action.

"I believe that the company dismissed me because I made disclosures about financial and other serious irregularities in the business," Findlay said in a statement last month.

Adrian Thomas, a spokesman for Cantor in London, declined to comment. The company said last month that the employment tribunal claims were "without merit."

Guy Dehn, the director of Public Concern at Work, a lobbying group that helped draft the 1999 Disclosure Act, said the law was never intended to become a means for "people to dress up their own private agendas."

"We may have reached a tipping point," he said. "It is very important that companies and their lawyers, if they receive a specious claim, should fight it and get it thrown out."

But Ronnie Fox, a London lawyer who runs his own firm, said lawyers would be negligent if they did not file whistle-blowing claims on behalf of their clients.

"Whistle-blowing and sex discrimination claims really raise the temperature like nothing else," he said.

Leaver, of Herbert Smith, said that most whistle-blower claims he had seen came from people "motivated by trying to line their pockets, rather than highlighting any alleged wrongdoing."

But Daniels dismissed most of the criticism of the cases.

"Numerous employees in the City face reprisals for blowing the whistle," Daniels said, referring to the London financial district. "There is an unfortunate culture in the City of shooting the messenger - and rather than dealing with the problem, paying for it to go away."