

COMPLIANCE CODE OF CONDUCT – CONTEXT OR PRETEXT

In *Mark Thompson v. Quorum Health Resources, Inc.*, 1:06-cv-001658, (W.D.Kentucky, Bowling Green Div , Dec. 7, 2009), the U.S. District Court rejected the Defendant Quorum's motion for summary judgment in a retaliation action brought by a former Quorum hospital CEO, who claimed that Quorum terminated him in retaliation for his filing an earlier Qui Tam lawsuit against Quorum. Qui Tam suits are "private attorney general" cases brought to collect funds under the federal False Claims Act for fraud against the federal government.. In the Qui Tam case, Mr. Thompson asserted that Quorum fraudulently selected a Group Purchasing Organization for its hospitals which benefited Quorum to the detriment t of individual hospitals. That case was dismissed with prejudice.

Quorum received notice of Thompson's filing of the Qui Tam action from Thompson's attorney and the U.S. Attorney's office and was warned that retaliation could be a violation of federal law. Quorum terminated him anyway. Quorum alleged that it had a legitimate reason for terminating Thomson – his refusal to cooperate with Quorum investigators who were investigating his false claim allegations and his refusal to comply with a written compliance code of conduct that required him to report known compliance lapses. Mr. Thompson was required to annually renew his pledge to adhere to the Compliance Code of Conduct.

While agreeing that quorum identified a legitimate reason for termination separate from retaliation, the court determined that there was a factual issue as to whether those grounds were mere "pretext" and denied Quorum's motion for summary judgment. The court noted that the temporal proximity between the termination and Quorum's receipt of knowledge of the fraud case, while not alone sufficient, could be used with other evidence to establish pretext.

Quorum argued that it received the complaint in the lawsuit after Thompson was suspended with pay for non-cooperation and when it learned that he had signed the annual Code of Conduct affirmation days before filing his complaint, it was the final straw that led to his firing. The court noting that the Code of Conduct compliance obligation was a continuing, not an annual duty, related that the importance of the timing of Plaintiff's signing of the acknowledgement "seems to have been exaggerated" by Quorum.

"You win battles by knowing the enemies timing and using timing which the enemy does not expect." – Miyamoto Mushashi – (17th Century Japanese swordsman)