



**In the Matter of:**

**BRYAN HORN,**

**ARB CASE NO. 2018-0033**

**COMPLAINANT,**

**ALJ CASE NO. 2017-CFP-00003**

**v.**

**DATE: June 18, 2020**

**UNIVERSITY FIRST  
FEDERAL CREDIT UNION,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**David J. Holdsworth, Esq.; *Law Office of David J. Holdsworth*; Sandy, Utah**

***For the Respondent:***

**Bruce L. Richards, Esq.; *Bruce L. Richards and Associates*; Salt Lake City, Utah**

**Before: Heather C. Leslie, James A. Haynes, and James D. McGinley,  
*Administrative Appeals Judges***

**DECISION AND ORDER**

PER CURIAM. This case arises under the employee protection provisions of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, 12 U.S.C. § 5567 (2010) (CFPA) and its implementing regulations at 29 C.F.R. Part 1985 (2019). On June 21, 2016, Bryan Horn filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that he engaged in activities protected by the CFPA, and those activities contributed to his discharge from employment with University First Federal Credit Union (UFFCU). OSHA

determined that Horn did not engage in CFPA-protected activity during his employment, and Horn thereafter requested a hearing on his complaint.

An Administrative Law Judge (ALJ) held a hearing on the complaint on November 1, 2017. On February 27, 2018, the ALJ issued a Decision and Order (D. & O.) in which he also concluded that Horn did not engage in CFPA-protected activity during his employment at UFFCA. Horn appealed the ALJ's D. & O. to the Administrative Review Board (ARB). For the following reasons we affirm the D. & O.

### **BACKGROUND**

The ALJ's findings of fact are not in dispute. To summarize, UFFCU hired Horn as a Financial Service Representative (FSR) at its Sandy, Utah branch on August 31, 2015. His duties included selling real estate, auto, and personal loans. During his employment he expressed dissatisfaction with some of UFFCU's internal procedures, and he considered them inadequate compared to his previous employer. As an FSR, Horn was required to follow procedures under the Truth in Savings Act (TISA). D. & O. at 2-3.

In early December 2015, Susan Toole, a UFFCU Auditor, visited the Sandy office and Horn discussed with her his concerns about UFFCU's procedures. Horn and Toole spoke for approximately forty minutes. Horn suggested ways to improve customer service, expressed concerns about UFFCU's alarm system, and offered to help create an online procedural manual for employees. On December 8, 2015, Horn sent Toole an email summarizing his suggestions to "improve operational errors and clarify procedure." D. & O. at 2-3, citing Complainant's Exhibit (CX) 4; Transcript (Tr.) at 32.

On February 2, 2016, a credit union member contacted Horn to apply for an auto loan. Horn worked on the loan for approximately ten days. On February 12th, the member told Horn she was ready to purchase a car but, on February 13th she closed the loan at UFFCU's Brickyard branch. The Acting Manager of the Brickyard branch changed the name of the loan's processor so she and the branch would get credit for processing the loan. D. & O. at 3.

Horn contacted UFFCU Branch Manager Bret Carter on February 17th to discuss the auto loan because he believed it was not "legally and ethically right for someone to steal someone's work." Tr. at 46. Horn indicated that he could no longer work at UFFCU "due to a number of issues" and would resign that evening if UFFCU would "allow him to apply for unemployment." CX 11. Horn asked for 24 hours to consult with an attorney, and he and Carter agreed to talk the following day. D. & O. at 4; Tr. 48.

On February 18, 2016, Horn sent an email to Carter, Human Resource Manager Scott Mann, and Regional Manager Verl Tidwell expressing his desire to continue his employment. Later that day, Mann gave Horn a letter in which he stated that “we do not feel that having an employee in a sensitive member position, who does not have the desire to be with us, is in the best interest of all parties. Subsequently you can resign or we will have to terminate employment with you.” CX 15. Horn agreed to resign that day and before leaving the premises he completed a letter in which he resigned from employment and accused UFFCU of violating “ethics and banking laws.” CX 16 at 2.

### **JURISDICTION AND STANDARD OF REVIEW**

The Secretary of Labor has delegated to the ARB authority to hear appeals from ALJ decisions and issue agency decisions in cases arising under the CFPA. Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 1985.110(a). The ARB reviews questions of law presented on appeal de novo, but is bound by the ALJ’s factual determinations as long as they are supported by substantial evidence. 29 C.F.R. §1985.110(b); *Jacobs v. Liberty Logistics, Inc.*, ARB No. 2017-0080, ALJ No. 2016-STA-00007, slip op. at 2 (ARB Apr. 30, 2019) (reissued May 9, 2019) (citation omitted).

### **DISCUSSION**

The CFPA protects employees from retaliation for engaging in activities related to the offering or provision of consumer financial products or services:

- (a) In general - 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 or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has-
  - (1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency 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 1 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;

- (2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title 1 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;
- (3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or
- (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.

12 U.S.C. § 5567(a). To prevail on retaliation complaint, a complainant must prove that he or she engaged in CFPA-protected activity, was subjected to an adverse employment action, and the protected activity contributed to the adverse action. 29 C.F.R. § 1985.109(a). The ALJ held that Horn failed to prove that he engaged in CFPA-protected activity. We agree.

The ALJ found that Horn criticized UFFCU's loan closing procedures and accused the company of engaging in unethical conduct. D. & O. at 7. But the ALJ did not credit Horn's testimony stating that he raised concerns about violations of law or was "actively encouraged" not to print out disclosures required under the TISA. *Id.* at 6. The ALJ acknowledged that Horn spoke to Toole about TISA disclosures and found that Horn made suggestions for improving customer service. But in doing so Horn did not raise concerns about UFFCU's compliance with disclosure laws. *Id.* at 6-7.

On appeal Horn's counsel does not point to any record evidence indicating that Horn engaged in CFPA-protected activity. Instead, he merely claims that if "Mr. Horn was complaining . . . that the lack of written or standardized or internal policies and procedures could lead to mistakes and violations of Dodd-Frank, then

such complaints should be entitled to protection.” Complainant’s Brief at 5. This is incorrect because an employee does not engage in whistleblower activity by describing merely theoretical situations. Such a belief is too attenuated from the standard to be a reasonable belief of a violation of law and therefore failed to satisfy one of the required elements of his retaliation claim. Stated another way, mere speculation does not satisfy Horn’s burden.

#### CONCLUSION

The record supports the ALJ’s conclusion that Horn did not engage in CFPA-protected activity during his employment at UFCCU. Accordingly, we **AFFIRM** the ALJ’s D. & O. and the complaint in this matter is **DENIED**.

**SO ORDERED.**