

Whistleblower, after retaliation by JPMorgan, pays FINRA price, too

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Thanks to a settlement this week, FINRA has punished just one known individual associated with a 2015 product-pushing case in which JPMorgan admitted it breached its fiduciary duty to clients nationwide: a whistleblower.

Johnny Burris, now an independent RIA in Surprise, Arizona, [has settled his FINRA case over a \\$624 client loss](#), accepting a \$5,000 fine and a five-day suspension.

Burris says he spent \$50,000 on the case and that's he's out of money to keep fighting.

"They've still done nothing to anybody at JPMorgan, for God's sake," Burris says, "but they come after me for trying to help out my clients."

Officials at JPMorgan and FINRA declined to comment for this story.

In settling, Burris neither admitted nor denied guilt.

BANK ADMITTED GUILT



The Labor Department found that JPMorgan Chase retaliated against RIA Johnny Burris by firing him months after he complained that he was being pressured to breach a fiduciary duty to his clients.

In 2015 JPMorgan [admitted it breached its fiduciary duty](#) by pushing the bank's own high-priced investments on unsuspecting clients. It paid the highest SEC fine of the year in the case, at \$267 million, and another \$40 million to the Commodity Futures Trading Commission in a parallel case.

The fines came three years after Burris supplied the SEC with hundreds of pages of documentary evidence about the same alleged sales practices, [as well as secret recordings](#) of numerous managers urging him to push products.

That \$307 million in total is substantially more than the \$185 million in fines paid by Wells Fargo in the high-profile fraudulent-accounts scandal last year that continues to draw national attention.

Earlier this year, the Labor Department's Occupational Safety and Health Administration [found that JPMorgan retaliated against Burris](#) when it fired him in 2012, months after he blew the whistle. Burris is appealing that decision, which awards back pay and damages in the mid six figures, far less than the \$2 million he says he has lost in compensation since 2012.

Whistleblower protection laws provide that people who experience retaliation must be immediately reinstated to their positions, and some can receive lost wages. OSHA [ordered reinstatement of an unnamed Wells Fargo whistleblower](#) last week and indicated that it may do the same for another Wells whistleblower named Claudia Ponce de Leon. The cases could mean the government is taking a [stronger approach to protecting whistleblowers](#) than it has in the past.

'VERY SERIOUS VIOLATIONS'

FINRA sued Burris on behalf of JPMorgan in September, while his own OSHA case was still underway, [over an unusually small loss](#) for a pair of his married clients: just \$624. It also accused him of other transgressions, such as using doctored bank letterhead.

"These are very serious violations," a FINRA spokeswoman said last year of the Burris case. "FINRA does not file a formal complaint unless it has strong reason to believe there are violations at its core."

A quasi-governmental body, FINRA is run by the firms it polices. JPMorgan is its largest member firm with \$2.5 trillion in assets.

However, the clients who JPMorgan accused Burris of harming signed an affidavit saying they never complained about Burris. They say FINRA attributed "wrongful" statements to them in writing up a complaint under their names. [[Read the document](#)]

JPMorgan admitted that Burris' former manager Laya Gavin wrote up complaints on behalf of his clients. FINRA filed a notice on Gavin's BrokerCheck report that it may take action against her, although she no longer works for the bank.

Burris' showed *Financial Planning* a document that he said [demonstrates that his compliance officer approved the use of the letterhead](#).

"FINRA had a range of choices as to how to treat the tax issue, and it had no good reason to punish Johnny the way it did, except to please JPMorgan," says Darrell Whitman, a former federal whistleblower investigator for OSHA, who briefly handled Burris' case in 2014.

Whitman and the next investigator who handled Burris' case, Susan Kamlet, say the federal government denied Burris justice. Both Whitman and Kamlet were later fired from their jobs.

Whitman accuses the Labor Department of routine collaboration with corporate defendant firms [in his own whistleblower case](#), which is now pending before the Office of Special Counsel.

Most financial services whistleblowers must file cases with OSHA in order to seek the full protection under the law.

A 'SMEAR' CAMPAIGN

Tom Devine, a lawyer who is representing Whitman in his special-counsel case, described FINRA's decision to sue Burris last year as a "smokescreen."

"The tax issues were pretexts generated by JPMorgan to smear Mr. Burris and have been repudiated by all the so-called victims," says Devine, who says the tactic is a common one among defendant corporations in whistleblower cases.

Corporations never admit to firing whistleblowers, Stephen Kohn, executive director of the National Whistleblower Center, adds.

"They always come up with a phony reason to justify the retaliation," says Kohn, who represented a former UBS employee in a 2012 case that produced the largest IRS whistleblower award to date at \$104 million. "This makes whistleblower cases expensive and painful for the employee."

Richard Moberly, a dean at the University of Nebraska College of Law and an expert in whistleblower law, said generally speaking such tactics are common.

"When retaliation occurs, one strategy of companies is to rely on pretextual reasons for the firing," Moberly said.

Burris' former clients Leona and Raymond Weaklend criticized the way FINRA enforcement lawyer Margery Shanoff and [Andrew Held, another former JPMorgan executive who managed Burris](#), handled their case.

"Mr. Burris has been nothing but helpful our entire time of working with him," the couple wrote in a notarized letter on Dec. 15, 2015. "Maybe Chase needs to reimburse us for the stress, time, frustration, and wrongful statements attributed to us by Mr. Held."

After Burris left JPMorgan, the couple moved their assets over to his RIA.

On top of the \$50,000 Burris said he spent defending himself in the Weaklend case, he says he spent at least \$100,000 more on an earlier FINRA arbitration he lost to the bank in 2013.

"They could have put there was a unicorn in my backyard, and I'd have had to sign it," Burris says of this month's settlement. "I have been drained of money by FINRA and JPMorgan."



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