

# SEC Brings Charges Against Former CEO for Retaliating Against a Whistleblower and Impeding Whistleblowing

Article By:

Jason Zuckerman

Matthew Stock

---

In an amended complaint filed in [SEC v. Adam Rogas, et. al](#), a fraud case alleging that NS8 defrauded investors by falsely claiming millions of dollars in revenue, the SEC added charges against Adam Rogas, NS8's former CEO, for allegedly impeding and retaliating against an employee who blew the whistle on Rogas' fraudulent conduct.

The facts alleged in the complaint are a striking illustration of how a company should not respond to an internal whistleblower complaint. Rogas, who made more than \$17 million from his fraud scheme, suspended the whistleblower's access to NS8 computer systems, barred the whistleblower from NS8's office, accessed the whistleblower's personal email account to obtain the whistleblower's communications with his attorney about an SEC whistleblower complaint, and swiftly terminated the whistleblower's employment. Holding Rogas accountable for his efforts to impede a whistleblower's communication to the SEC and his retaliation against a whistleblower is important to ensure the [continued success of the SEC whistleblower program](#).

## Rogas' Fraud Scheme

According to the [SEC's complaint](#), Rogas was the founder and CEO of NS8, a private technology company. He defrauded NS8 investors in various securities offerings by falsifying NS8's bank statements to give the appearance that NS8 was generating millions of dollars in customer revenue with tens of millions of dollars of assets on hand.

He used the false financial information in investor presentations and provided fake bank statements and financial statements to investors, misrepresenting NS8's total assets by tens of millions of dollars. NS8 raised approximately \$149 million in these offerings as a result of Rogas' fraud, and Rogas pocketed at least \$17.5 million of the investor funds.

## Rogas Impedes a Whistleblower from Communicating with the SEC

In 2018 and 2019, an employee raised concerns internally that NS8 was overstating its number of paying customers and falsifying customer data, including purported customer numbers and monthly

---

revenue. In July 2019, the whistleblower submitted a TCR to the SEC alleging that NS8 may have overstated its number of customers and revenue, and that the incorrect numbers may have been used in a securities offering.

Shortly after reporting the fraud to the SEC, the whistleblower raised his concerns directly with NS8's Chief of Staff ("COS") and the whistleblower's supervisor and stated that unless NS8 addressed this inflated customer data, he would report the misconduct to investors, customers, and any other interested parties. Later that day, after receiving an urgent call from the COS, Rogas and the COS cut off the whistleblower's access to NS8's IT systems and office building in an attempt to impede the whistleblower's communications with the SEC. Rogas and the COS then accessed the whistleblower's work computer, and logged on to the whistleblower's Hotmail, Dropbox, Facebook, Glassdoor, and Google accounts and accessed the whistleblower's correspondence with his counsel about his submissions to the SEC.

The SEC alleges that barring the whistleblower from accessing NS8's computer systems and office and accessing the whistleblower's personal email account to obtain information about his whistleblowing to the SEC violates Exchange Act Rule 21F-17, which prohibits any person, including a company, from impeding an individual's ability to report potential securities-related misconduct to the SEC.

## **Rogas Retaliates Against the Whistleblower**

Just 3 days after the whistleblower met with Rogas, the COS, and the whistleblower's supervisor to reiterate the whistleblower's concerns about the accuracy of NS8's customer numbers, Rogas directed the whistleblower's supervisor to terminate the whistleblower's employment. The SEC alleges that the termination violated the [whistleblower protection provision of the Dodd-Frank Act](#).

## **Implications for SEC Whistleblowers**

To date, the SEC has brought 17 actions against companies and individuals for violating Rule 21F-17, including an action against the perpetrators of a fraudulent securities offering for their attempt to resolve investor allegations of wrongdoing by conditioning the return of investor funds on the investors signing agreements that prohibited them from reporting potential securities laws violations to law enforcement. Most of the enforcement actions arose from overly broad non-disclosure agreements or policies that lack an exception for voluntary communications with the SEC concerning possible securities laws violations. These enforcement actions have had a profound impact and prompted many companies to modify their non-disclosure agreements, employment policies, and employment agreements to clarify that they do not prohibit lawful whistleblowing.

Rogas' patent efforts to impede a whistleblower from reporting Rogas' fraud and his swift retaliation against a whistleblower for reporting fraud to the SEC underscores the significant risks that whistleblowers take when they disclose fraud internally or to the SEC. Fortunately, the SEC whistleblower program provides safeguards to mitigate those risks, including the option to report to the SEC anonymously through counsel, a prohibition against retaliation, and a rule barring companies and individuals from impeding whistleblowing to the SEC. Those pillars of the SEC whistleblower program have been a key factor in its success.

During FY 2022, the SEC received 12,300 whistleblower tips, disclosures that help the SEC to promptly detect and halt fraud schemes before investor losses mount, return funds to harmed investors, and conserve time and resources in investigations and enforcement actions. According to

a [recent annual report of the program](#), “[e]nforcement actions brought using information from meritorious whistleblowers have resulted in orders for more than **\$6.3 billion in total monetary sanctions**, including more than \$4.0 billion in disgorgement of ill-gotten gains and interest, of which more than **\$1.5 billion** has been, or is scheduled to be, **returned to harmed investors**.” To ensure the continued success of the SEC whistleblower program, the SEC should hold companies and individuals accountable for impeding lawful whistleblowing.

Read more on Dodd Frank SEC Whistleblower Protections [here](#).

© 2024 Zuckerman Law

---

National Law Review, Volumess XII, Number 336

Source URL:<https://natlawreview.com/article/sec-brings-charges-against-former-ceo-retaliating-against-whistleblower-and-impeding>