

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 16-1045**

**September Term, 2016**

**SEC-2012-76**

**Filed On:** December 14, 2016

Toni Smith-Penny,

Petitioner

v.

Securities and Exchange Commission,

Respondent

## **PETITION FOR REVIEW FROM AN ORDER OF THE SECURITIES AND EXCHANGE COMMISSION**

**BEFORE:** Tatel, Kavanaugh, and Millett, Circuit Judges

### **J U D G M E N T**

This petition for review of an order of the Securities and Exchange Commission was considered on the briefs and appendix filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

**ORDERED AND ADJUDGED** that the petition for review be dismissed. A determination in a whistleblower case must “be appealed . . . not more than 30 days after the determination is issued by the Commission.” 15 U.S.C. § 78u-6(f). In this case, the petition for review was filed outside this 30-day period. Even if the time limit is not jurisdictional, see *Menominee Indian Tribe of Wisconsin v. United States*, 614 F.3d 519, 524 (D.C. Cir. 2010) (equitable tolling permitted when time limit is non-jurisdictional), petitioner has not presented any circumstances warranting equitable tolling.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

### **Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Ken Meadows  
Deputy Clerk