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NCLA Files for Summary Judgment in Case Where SEC Is Seeking to Enforce Guidance Instead of Law

U.S. Securities and Exchange Commission v. Spartan Securities Group, LTD., et al.

Washington, DC (August 21, 2020)—Today the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [motion](#) asking the U.S. District Court for the Middle District of Florida to issue summary judgment in favor of NCLA’s clients in *U.S. Securities and Exchange Commission v. Spartan Securities Group, LTD., et al.* NCLA argues that the SEC is rewriting the rules and seeking to unlawfully enforce agency guidance against defendants Spartan Securities Group, LTD., Island Capital Management LLC, Carl E. Dilley, Micah J. Eldred, and David D. Lopez.

The SEC alleges that market-makers Spartan, and transfer agent Island, were involved in filing Form 211 applications with the Financial Industry Regulatory Authority (FINRA) to publicly list 19 issuers’ common stock to be traded and available to investors. The SEC eventually discovered that the issuers had been involved in fraud, and now faults Spartan and Island for failing to discover the misconduct. The Commission also claims the companies failed to investigate certain SEC “red flags” raised by FINRA. However, SEC has repeatedly emphasized the limited nature of the obligation of market-makers and rejected any view that they have a special due diligence requirement to look beyond the statements made to them by issuers of securities.

Neither Spartan nor Island nor any of their employees were involved in the creation or operation of the named issuers listed in the complaint, and they have amply complied with their statutory obligations, gathered all required information, and compiled reams of documents supporting the applications above and beyond the lawful requirements. NCLA argues that SEC is attempting to hold the defendants liable under an arbitrary expansion of the requirements of applicable rules set out by Congress and the Commission itself. SEC’s Division of Enforcement would hold the market-makers responsible, even when both regulators from FINRA and the SEC’s own examiners have analyzed the same information and declared it to be valid and genuine.

The Enforcement Division also seeks to fundamentally alter the scope of a transfer agent’s liability under Section 5 of the Securities Act. It proposes to hold transfer agents, like Island, strictly liable for merely recording others’ transfers of securities, no matter that the transfer agent played no role whatsoever in arranging the transfer. Never mind that the transfer agent faces liability should it refuse the transfer. This theory was rightly rejected by the only court to have ever faced it, as it would mean that every transfer agent is *always* liable for any underlying misconduct—known or unknown. Following legal precedent, NCLA asks the Court to flatly reject SEC’s unlawful attempt to regulate by enforcement and guidance.

NCLA released the following statements:

“Enforcement attorneys working for agencies routinely try to push regulatory requirements far beyond the limits set out by Congress and even the agencies themselves. They do so to try to extort quick settlements from the targets of their abuse, knowing full well that most small companies can never afford to mount a meaningful legal defense. Those thuggish tactics won’t work here. NCLA’s clients have taken a stand against the SEC’s unlawful attempt to rule by enforcement, and they welcome being fully exonerated by a jury of their peers.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

“For the better part of a decade, the SEC has tried to regulate market-makers and transfer agents by fiat and unpromulgated guidance. To the extent that the Commission has managed to extract settlements from regulated entities on its legally suspect theories, it has succeeded. But successful enforcement by settlement and lawful enforcement in a court of law are not the same thing. The Court should stop the SEC’s wild expansion of its enforcement authority beyond statutory limits.”

— **Kara Rollins, Litigation Counsel, NCLA**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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