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NCLA Challenges SEC’s ‘Hotel California’ Administrative Adjudication Regime

In re Marian P. Young and Saving2Retire, LLC

Washington, DC (April 24, 2023) – Since 2014, the U.S. Securities and Exchange Commission (SEC) has been inspecting, investigating, and prosecuting Marian Young and her former investment business Saving2Retire, LLC, with no end in sight. SEC’s adjudication regime has deprived them of a jury trial and the Commission itself is now willfully refusing to decide their appeal from an administrative law judge’s (ALJ) initial decision issued back in August 2019, effectively blocking them from access to federal court review for nearly four years.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [petition](#) today on behalf of Ms. Young and her company, asking the U.S. Court of Appeals for the Fifth Circuit to issue a writ of mandamus against the SEC Commissioners in *In re Marian P. Young and Saving2Retire, LLC* that would compel them to either dismiss the case or else promptly decide the appeal in the agency’s eight-year-old administrative matter.

Under SEC’s own rules, agency commissioners had to decide our clients’ appeal no later than October 2020. But instead of deciding the case and allowing our clients to seek judicial review promptly in a federal court, SEC has summarily granted itself *eleven* successive 90-day extensions of time to issue its final decision—collectively delaying the deadline set by its own rules by 990 days thus far (and counting). SEC’s prolonged and willful refusal to decide our clients’ case is depriving them of their right to a fair and timely adjudication under the Due Process Clause of the Fifth Amendment and under the Administrative Procedure Act.

SEC has lost five of its last six cases at the U.S. Supreme Court and is still reeling from NCLA’s unanimous victory in [SEC v. Michelle Cochran](#). SEC has especially good reason to dread judicial scrutiny in Ms. Young’s case. As a Texas resident, Ms. Young and her company would benefit from the Fifth Circuit’s decision in *Jarkesy v. SEC*. That case held that SEC administrative enforcement proceedings deprive respondents like Ms. Young of their Seventh Amendment jury trial rights, that ALJs enjoy an unconstitutional degree of multi-layered protection from presidential removal, and that Congress violated the nondelegation doctrine by giving SEC unfettered discretion to choose whether to prosecute alleged wrongdoers administratively or in federal courts.

The most appropriate remedy for SEC’s inexcusable dereliction of duty would be a writ of mandamus compelling SEC to dismiss its administrative enforcement proceeding against Ms. Young and her LLC. At a minimum, the Fifth Circuit should compel SEC to issue a prompt final decision enabling the case to progress to federal court.

NCLA released the following statements:

“SEC’s willful refusal to decide our clients’ case—and many similar cases languishing there on appeal for years—is an outrageous and inexcusable dereliction of duty. Our clients have been trapped in this administrative version of the Hotel California for far too long, so we’re asking the Fifth Circuit to unlock the doors and let them leave.”
— **Russ Ryan, Senior Litigation Counsel, NCLA**

“Rather than deciding Ms. Young’s case and permitting her to appeal, the Commission has chosen a strategy of serial delay. To what end? SEC’s willful disregard for our clients’ constitutional rights, particularly their rights to a fair and impartial tribunal and to a jury trial, is inexcusable.”

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

For more information visit the case page [here](#).

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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