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NCLA Calls on 11th Cir. to Vacate District Court’s Judgment in Case SEC Never Should Have Brought

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

Washington, DC (January 17, 2023) – The New Civil Liberties Alliance filed an [opening brief](#) today on behalf of its clients in *U.S. Securities and Exchange Commission v. Spartan Securities Group, LTD., et al.* in the U.S. Court of Appeals for the Eleventh Circuit. NCLA contends that the district court committed multiple legal errors and abused its discretion throughout this litigation to the detriment of Appellants Micah Eldred, Carl Dilley, Spartan Securities Group, Island Capital Management, and their legal, procedural, and constitutional rights.

On February 20, 2019, the Securities and Exchange Commission (SEC) brought 14 counts against Appellants, alleging their participation in two schemes to aid and abet the creation of fake publicly traded companies and subsequent issuance of stock between December 2009 and August 2014. After a 12-day trial in July 2021, the jury returned a verdict in favor of Appellants on 13 of the 14 counts charged. The sole remaining count in favor of SEC—that Appellants made materially misleading statements or omissions in connection with the purchase of the issuers’ securities—led the court to award various monetary and equitable remedies, including disgorgement.

However, the district court erred, because Appellants did not make any material misrepresentations or materially misleading omissions in connection with the sale of securities. The alleged statements were made, if at all, to a *regulator* in a nonpublic process, so they could not have been material to investors who never saw the statements. Nor did they occur at the same time as a securities transaction, which a finding of liability would require. In addition, the only “false statements” the judge could have relied upon were either not material, or else were conclusively rejected by the jury in its verdict or were omissions that Appellants had no duty to disclose. NCLA argues the district court erred when it determined that there was sufficient evidence to support a jury verdict finding that Appellants violated the Exchange Act. The court improperly relied on acquitted conduct in its remedy rulings; given that the jury in this civil case made its findings based on the preponderance of the evidence, the judge could not consider facts explicitly repudiated by the jury in setting the civil penalty. The court also denied Appellants their Seventh Amendment right to trial by jury on facts necessary to assess liability or civil penalties.

The district court also erred, as a matter of law, when it permitted time-barred conduct to go before the jury. All the forms of relief sought by SEC were subject to a five-year statute of limitations. Because SEC’s claims were time-barred, they should never have gone before the jury. There was no legally sufficient evidence establishing that specific misrepresentations or omissions were made within the applicable five-year statute of limitations. Additionally, the court admitted “junk science” into the case that prejudiced Appellants.

Finally, disgorgement is not appropriate in this case. The SEC’s request for disgorgement was a thinly veiled attempt to extract penalties for counts that the jury explicitly rejected. There is no causal connection between the disgorged fees and the conduct at issue. Moreover, disgorgement sought under the relevant statute must also be “for the benefit of investors.” SEC has identified no harmed investors, nor could it. Ordering Appellant Island to pay disgorgement to the Treasury stretches the bounds of equity and should be rejected.

NCLA released the following statements:

“On the eve of the statute of limitation period running, SEC filed a vastly over-pled complaint. Since then, it has become obvious that the SEC never should have filed this case. The jury below rejected 13 of 14 counts, and the sole verdict in SEC’s favor is not supported by legally sufficient evidence. The court erred at critical junctures throughout this case, to the detriment of our clients. We look forward to the Eleventh Circuit hearing this case and vindicating our clients on the only remaining count.”

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

“Our clients never communicated to the investing public about anything. So, it’s pretty hard to see how a statute that imposes liability for misinforming the public could apply to them. It’s also amazing that the SEC complained of statements that were *taken from SEC’s own website* by our clients in complying with their regulatory duties. Liability based on statements published by SEC should be limited to the SEC, which put up the information in the first place.”

— **John J. Vecchione, Senior 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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