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NCLA Fights SEC’s Unconstitutional “Rubber-Stamp” Follow-on Enforcement Proceedings

Reverend Father Emmanuel Lemelson v. Securities and Exchange Commission

Washington, DC (August 21, 2024) – Today, the New Civil Liberties Alliance filed a [Complaint](#) in the U.S. District Court for the District of Columbia challenging the Securities and Exchange Commission’s illegitimate “follow-on” enforcement proceeding against Rev. Fr. Emmanuel Lemelson, an ordained Greek Orthodox priest and activist investor. A Massachusetts federal jury in 2021 rejected nearly all of SEC’s baseless charges against Fr. Lemelson, including *all* its incendiary allegations that he engaged in a scheme to defraud the market and even his own fund investors. Yet, SEC now threatens to bar or suspend him from the securities industry using its own “follow-on” administrative proceeding, in which SEC has appointed itself as the judge and jury. NCLA’s filing asks the D.C. District Court to stop this “caricature of structural adjudicative bias” and declare it unlawful.

A bedrock foundation of due process is a fair trial in a fair tribunal. That should mean the adjudicator cannot decide its own case, especially against a longstanding nemesis it has already prosecuted in a parallel court case and demonized in demonstrably false press releases. Having failed even to ask the federal court to bar or suspend Fr. Lemelson from the securities industry—much less convince the court to do so—SEC has now appointed itself judge and jury in its own administrative “follow-on” adjudication to achieve that objective unilaterally. This violates not only Fr. Lemelson’s Fifth Amendment right to due process of law in an Article III court, but also his Seventh Amendment right to a trial by jury.

SEC’s inherently biased follow-on proceeding against Fr. Lemelson is far from unique. SEC has prosecuted hundreds of similar follow-on cases in recent decades. Unsurprisingly, according to academic research, SEC has ruled in its own favor in every single follow-on case. It is long past time to end this mockery of justice.

NCLA released the following statement:

“SEC has been playing this expedient administrative trick for decades: First, accuse someone of wrongdoing in court filings and related press releases. Then, when the case is over, appoint itself as judge and jury to decide whether the same person should be barred or suspended from the securities industry. SEC’s answer is always yes, as one would expect whenever a judge is allowed to decide his own cases. The Constitution strictly forbids this kind of charade—which bears no resemblance to due process of law.”

— **Russ Ryan, 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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