

[Securities Regulation Daily Wrap Up, ENFORCEMENT—D. Minn.: Unregistered brokers who sold energy company shares ordered to disgorge, \(Dec. 10, 2015\)](#)

Securities Regulation Daily Wrap Up

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By [Kevin Kulling, J.D.](#)

A Minnesota federal court has ruled that a company and its founder were acting as unregistered brokers when they sold shares of Bixby Energy Systems, Inc., an alternative energy company. The court granted the SEC's request for injunctive relief and ordered the disgorgement of \$240,000 of ill-gotten gains that they received for selling the securities (*SEC v. Gary Collyard*, December 9, 2015, Ericksen, J.).

Broker vs. finder. In granting the SEC's summary judgment motion, the court rejected arguments made by Paul Crawford and his Crawford Capital Corp. (CCC) that they were not acting as brokers but simply as "finders" who brought Bixby Energy to the attention of investors.

Crawford acted as broker. The court said that Crawford's efforts to connect investors with Bixby were "significant and multi-faceted." The court found several factors relevant in concluding that Crawford acted as a broker. For example, the court said that Crawford was not a Bixby employee but received transaction-based commissions. Crawford maintained a list of investor clients and he actively solicited these clients to invest or reinvest in Bixby and other issuers. He frequently offered optimistic assessments of the issuer and potential returns on an investment, and on occasion even provided tax advice and offered to arrange for a credit line for his clients. Crawford also interposed himself as an intermediary between the clients and Bixby at key points in the transaction, including at times handling client funds. He assisted in filling out some subscription agreements, accepted the clients' investment checks and sent them to Bixby and sent regular informational updates about Bixby along with solicitations for the clients to invest further in Bixby stock.

In addition, the court determined that the SEC met its burden with regard to CCC. Crawford was the sole owner and its only employee during the relevant time. Crawford communicated with investors and with Bixby in his capacity as CCC's owner and/or employee, and Bixby paid nearly all of the undisputed \$240,000 in commission payments to CCC. As a result, Crawford's broker activity was imputed to CCC.

Court rejects civil penalties. The court, however, did not impose civil penalties, agreeing with Crawford that the statute of limitations, which requires an "action, suit or proceeding for the enforcement of any civil fine, penalty, be commenced within five years from the date when the claim first accrued," barred the claims for civil penalties. The complaint involved allegations dating back from 2004 to 2006, while the complaint was filed in 2011.

On the other hand, the court said the equitable requests for disgorgement and a permanent injunction were not time barred.

Injunction. The court issued an injunction because it said there was a likelihood that Crawford would engage in future violations. Crawford and CCC acted as unregistered brokers collecting at least \$240,000 in commissions from over \$2 million of investments. Crawford and CCC also continued to act as brokers, soliciting clients to invest or reinvest in Bixby during 2011 and 2012, even after the SEC filed its complaint. Moreover, Crawford had his securities license suspended for earlier unrelated violations, and he did not renew his license even after the suspension was lifted.

Imputed liability. The court also considered a renewed [motion](#) for summary judgment against Collyard Group for acting as an unregistered broker. The court said that Collyard's liability could be imputed to Collyard Group. Collyard entered a plea in a parallel criminal action where he acknowledged that he was doing so in his capacity as a principal of Collyard Group.

Although the court granted judgment against Collyard Group, the court declined to issue a permanent injunction because the SEC could not show that Collyard Group, which had been administratively terminated while its sole owner and officer was sentenced to a ten year prison term, was likely to commit future violations.

The Crawford and Collyard actions were part of a larger enforcement [action](#) that included cases filed against the founder of Bixby Energy and several others who were part of a network of unregistered brokers.

The case is [No. 11-CV-3656](#).

Attorneys: James S. Alexander, U.S. Attorney's Office, and Charles J. Kerstetter for the SEC. Robert O. Knutson (Knutson Law Office) for Gary A. Collyard.

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