

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—11th Cir.: ‘Meritless’ arguments kill fraudster’s appeal, \(Dec. 2, 2014\)](#)

Securities Regulation Daily Wrap Up

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By Amy Leisinger, J.D.

In an unpublished opinion, the Eleventh Circuit affirmed a Florida district court’s grant of summary judgment in favor of the SEC in an action against an unregistered broker engaged in fraudulent activities. According to the court, Daniel Imperato, founder of Imperiali, Inc., failed to demonstrate any genuine issues of material fact as to the alleged misrepresentations made to the Commission and the investing public and presented only “meritless” arguments to support his position (*SEC v. Imperiali, Inc.*, December 2, 2014, *per curiam*).

Background. In 2005, Imperato launched an unregistered offering of stock in Imperiali, and the company promoted the stock and cold-called prospective investors to solicit them to buy stock. Imperato also issued a private placement memorandum to investors stating that the company would invest in publicly traded companies and would earn hundreds of millions of dollars. Imperiali raised about \$2.5 million, but the funds were paid to another company owned by Imperato and used to pay his personal expenses. Thereafter, Imperiali elected to be regulated by the SEC as a business development company and, through Imperato, filed statements with the Commission that dramatically overstated Imperiali’s assets and listed investments in companies incapable of issuing stock.

In 2012, the Commission filed a complaint alleging 17 counts of violations of the federal securities laws. While a settlement was pending, a magistrate judge issued a report and recommendation, but a clerical error resulted in administrative closure of the case. The district court later reopened the case, and, on the SEC’s motion, the district court adopted the report and recommendation and granted summary judgment in favor of the Commission on all counts.

No genuine issues of material fact. Appearing *pro se* on appeal, Imperato argued that summary judgment was inappropriate because there were genuine disputes of fact as to whether he personally sold securities or received proceeds so as to directly or indirectly sell or offer securities without registration of the securities or as a broker and whether his valuations of Imperiali were false so as to involve a “material misrepresentation” for the purposes of the federal antifraud provisions. He also contended that he did not make filings with the Commission and was not in “control” of Imperiali for liability purposes.

The court rejected each of these arguments, noting that, even if a dispute existed as to whether Imperato personally contacted investors, he was at least a “substantial factor” in the sale of securities, and Imperiali and its securities were not registered. In addition, the court stated, Imperato provided information to investors and acted as the “closer” for his sales team, evidencing his position as a broker without being registered as such. The court also cited Imperato’s approval of press releases and statements that included false and misleading valuations and fictitious investments and filing of forms with Commission containing similar material misrepresentations and concluded that the record clearly shows that Imperato controlled Imperiali’s corporate decisions. There are no genuine issues of material fact that would support reversal of the district court’s decision, the court found.

Other meritless contentions. The court also found that the district court did not abuse its discretion in reopening the case, as an administrative closure of a case “has no effect other than to remove a case from the court’s active docket” and, in any event, the closure resulted from a “clerical error” and was never actually directed by court. Further, the district court was permitted to deny Imperato’s motion to amend or alter the judgment because he offered no new arguments or evidence and to deny Imperato’s requests for documents

when he failed to specifically set forth what he was denied. As such, the appellate court affirmed the district court’s decision in its entirety.

The case is [No. 13-14809](#).

Attorneys: Theodore Weiman for the SEC. Daniel Imperato, pro se.

Companies: Imperiali, Inc.

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