

[Securities Regulation Daily Wrap Up, ENFORCEMENT—D. Mass.: Fraudster's criminal conviction collaterally estops his civil re-litigation, \(May 29, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [Jay Fishman, J.D.](#)

Massachusetts' District Court granted the SEC's partial summary judgment motion by declaring that the defendant's previous criminal fraud conviction collaterally estopped his re-litigation of this civil case. The court simultaneously denied the defendant's partial summary judgment motion, and imposed penny stock and officer/director bars, as well as a \$150,000 civil penalty on him ([SEC v. Weed](#), May 25, 2018, Gorton, N.).

Pump-and-dump scheme. An Orange County, California attorney (the defendant in this civil case) and two Massachusetts men were charged by the SEC for their participation in a pump-and-dump scheme intended to defraud investors in stock of CitySide Tickets Inc., a Boston-based ticket brokering business. The complaint charged all three defendants with violating antifraud provisions of the federal securities laws and related rules. The SEC sought disgorgement of ill-gotten gains plus interest and penalties as well as penny stock bars and permanent injunctions against further violations of the securities laws, including Exchange Act, Section 10(b) and Securities Act, Section 5. The SEC also sought to bar the defendant from serving as an officer or director of any public company. In a parallel case, the U.S. Attorney's Office for the District of Massachusetts also announced criminal actions against all three defendants ([SEC v. Weed, et al.](#), November 6, 2014).

On May 16, 2016, the defendant was convicted in the parallel criminal case and sentenced to 48 months in prison.

SEC's summary judgment motion *granted*. The SEC contended that the defendant's criminal conviction arose from facts sufficient to show the necessary elements of security law violations in this civil action, to necessitate his being collaterally estopped from re-litigation the civil action. The defendant, asserted, however, collateral estoppel's inapplicability here because: (1) he did not have a full or fair opportunity to defend himself in the criminal proceeding; and (2) the facts forming the basis for his criminal conviction are not identical to the SEC's claims in this civil case.

The court began by remarking that courts routinely hold that a defendant convicted in a criminal proceeding is collaterally estopped from re-litigating the operative facts in a subsequent civil proceeding. The court then found the defendant's contention in (1) above to be unconvincing, and that (2) was untrue because one of the frauds the SEC alleged in the civil action is the same as the fraud for which the defendant was convicted in the criminal proceeding.

Defendant's summary judgment motion *denied*. The defendant argued that his partial summary judgment motion should be granted because his Securities Act, Section 5 violations for issuing unregistered securities did not apply because the securities were, in fact, *permanently exempt* from registration under Securities Act, Section 3(a)(9). He claimed that section 3(a)(9) exempts an entire class of securities and is, therefore, not a transactional exemption, so that once a security is exempt under Section 3 (a)(9) it retains its exempt status in subsequent transactions.

But the court declared that it previously considered and rejected the defendant's interpretation of Section 3(a)(9) in the court's disposition of his motion for acquittal and new trial in the criminal proceeding. The court additionally stated that his reading of the statute goes against the historical interpretation of Section 3(a)(9) by previous courts. And the court lastly proclaimed that interpreting the exemption as permanent goes against the

plain meaning of the statute which requires an issuer to meet the exemption's conditions for each subsequent transaction after the initial securities offering, rendering the exemption a transactional exemption.

The case is [No. 1:14-cv-14099-NMG](#).

Attorneys: Martin F. Healey for the SEC. William H. Connolly (Law Offices of William H. Connolly) for Richard Weed.

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