

Securities Regulation Daily Wrap Up, ENFORCEMENT—N.D. Cal.: After Ninth Circuit remand, Northern District of California imposes permanent trading ban, (Jun. 19, 2019)

Securities Regulation Daily Wrap Up

<http://prod.resource.cch.com/resource/scion/document/default/sld01af310a487d541000bf3a00505688693906?cfu=TAA&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah>

By [Brad Rosen, J.D.](#)

Prolonged litigation involving charges of solicitation fraud and making false statements to the NFA concludes with expected results.

The District Court for the Northern District of California entered an order against defendant James Crombie permanently banning him from trading on CFTC-regulated markets for his own personal account and from having such trades made on his behalf. ([CFTC v. Crombie](#), June 5, 2019, Wilken, C.).

Case history in the lower court. The [court's recent order stems from](#) a CFTC complaint filed in September 2011 that charged Crombie with making false statements and providing false documents to the National Futures Association (NFA), as well as fraudulently soliciting funds from his former company, Paron Capital Management, LLC.

In a July 2013, the district court entered an order granting the CFTC's motion for summary judgment on each count in its amended complaint. Specifically, the court found that Crombie violated Section 9(a)(4) of the Commodity Exchange Act by willfully making false statements and providing fraudulent documents to the NFA. Additionally, the court found that Crombie violated Sections 4b(a)(1) and 4o of the CEA for fraud by providing false promotional materials to potential clients in order to solicit their business.

Subsequently, the court granted the CFTC's motion for permanent injunction, restitution, and imposition of civil monetary penalties against Crombie. In its order, the district court imposed a permanent injunction, restitution, and civil monetary penalties against Crombie, as well as a personal trading ban enjoining him from engaging in any personal trading on CFTC-regulated markets.

Ninth Circuit affirms summary judgment against Crombie. Crombie appealed the lower court's summary judgment order to the Ninth Circuit Court of Appeals. In February 2019, the appellate court affirmed the lower court's summary judgment findings and imposition of restitution against Crombie. Nonetheless, the Ninth Circuit found that the district court incorrectly applied the civil standard of "willfully" instead of the criminal standard for purposes of Section 9(a)(4) of the CEA. Still, the court affirmed the grant of summary judgment on the charge because it found that Crombie had acted willfully even under the criminal standard. The appellate court also affirmed the grant of summary judgment on the CFTC's claims that Crombie violated Sections 4b and 4o of the CEA. However, the Ninth Circuit sought further explanation regarding the lower court's order in connection with the trading and remanded those provisions of the order for further proceedings.

District court provides reasoning and basis for trading ban. On remand, the district court entered an order imposing a permanent personal trading ban against Crombie as was sought by the CFTC. In support of the order, the court made detailed findings which included:

- The commission of future violations by Crombie are likely;
- Crombie's fraud is sufficiently egregious, even without findings of misappropriations;
- Crombie's actions were not isolated, as the court found numerous separate acts amounting to multiple violations;
- Crombie's actions were willful; and,

- As his brief shows, Crombie continues to argue that the court erred in its findings that he violated the CEA. Thus, he does not appear to recognize his own wrongdoing, and this detracts from the sincerity of any assurances against future wrongdoing he may have expressed.

The district court specifically rejected Crombie's arguments that (1) a personal trading ban was overly broad because there was no finding of misappropriation of client funds for personal use in this action; and (2) a personal trading ban was unnecessary given that the NFA had previously imposed a lifetime ban on membership against Crombie. The district court ruled that a personal trading ban was appropriate in order to prevent future fraud by Crombie and to protect market integrity.

The case is [No. 11-cv-04577-CW](#).

Attorneys: Danielle Edward Karst for the CFTC.

LitigationEnforcement: CFTCNews Enforcement FraudManipulation AlaskaNews ArizonaNews CaliforniaNews HawaiiNews IdahoNews MontanaNews NevadaNews OregonNews WashingtonNews GuamNews