

ENFORCEMENT—D.N.J.: SEC's 'equitable' relief request in penny stock action barred by five-year limitations period,(Dec. 15, 2017)

By Joanne Cursinella, J.D.

Finding the requested relief "punitive" rather than equitable, the New Jersey district court denied the Commission's request to enjoin the defendant from further illegal activity in connection with two penny stock manipulation schemes because the action was barred by the applicable five-year limitations period (SEC v. Gentile, December 13, 2017, Linares, J.)

Penny stock schemes. The underlying action involves two penny stock schemes allegedly perpetrated by the defendant. Both parties agree that any alleged criminal activity ended as of June 2008. The defendant moved here for dismissal of the action because it filed after the five-year limitations period set forth in 28 U.S.C. § 2462.

Penal? The court said that resolution of the motion turns on whether the relief sought by the SEC, an "obey-the law" injunction and "penny stock bar," is penal in nature. Ultimately deciding the request is penal, the court found unpersuasive the Commission's arguments that the requested injunctions are necessary because the defendant, in the future, is likely to commit violations similar to the ones charged. Further, the requests are penal in nature because the only purpose they would serve is to punish the defendant for his alleged participation in the penny stock schemes.

Section 2462 applies. Because the SEC requests are penal in nature, Section 2462 is applicable, the court said. And, as noted, this section imposes a five-year statute of limitations on the civil remedy actions brought by the Commission. Since it is undisputed that the alleged activity ended in 2008, the latest the action could have successfully been brought is June 2013, the court noted. The action was filed in March 2016. Therefore, the action is time-barred, the court said, and so dismissed it.

The case is No. 16-1619 (JLL).

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