Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—M.D. Fla.: Jury's verdict in favor of SEC supported by sufficient evidence, (Jan. 24, 2022)

Securities Regulation Daily Wrap Up

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By Elena Eyber, J.D.

A reasonable jury could find that a broker-dealer and a transfer agent were the "makers" of misrepresentations, that the misrepresentations were material, and that the misrepresentations were made "in connection with" the purchase of securities.

A federal district court in Florida has denied a broker-dealer and a transfer agent's renewed motion for judgment as a matter of law. The court found that the jury's verdict in favor of the SEC on Count Six was supported by sufficient evidence, and defendants failed to demonstrate that the evidence was so overwhelmingly in their favor that a reasonable jury could not have arrived at a different verdict. The court held that a reasonable jury could find that defendants were the "makers" of misrepresentations or omissions, that the misrepresentations or omissions were material, and that the misrepresentations or omissions were made "in connection with" the purchase of securities (*SEC v. Spartan Securities Group, Ltd.*, January 20, 2021, Covington, V.).

Procedural history. The SEC filed a complaint, alleging that a broker-dealer and a transfer agent violated the antifraud and registration provisions of the federal securities laws by misrepresenting unregistered offerings of blank check companies. The case proceeded to a jury trial in July 2021. During trial, defendants made an oral motion for judgment as a matter of law, which the court denied. The jury handed down a verdict in defendants' favor on 13 of the 14 counts. However, the jury rendered a verdict in favor of the SEC as to Count Six. On September 3, 2021, defendants filed a renewed motion for judgment as a matter of law, requesting that the court enter judgment in their favor on Count Six.

Makers of misrepresentations. Defendants argued that they cannot be held liable for misrepresentations made by the issuers. The SEC countered that the jury held defendants liable for their own misrepresentations and omissions contained in the Form 211 applications. The court found that there was ample evidence presented at trial that defendants signed the Form 211 applications that were sent to FINRA and contained inaccurate or misleading information. The court agreed with the SEC that the jury held the defendants liable for their own misrepresentations and omissions. The court held that a reasonable juror could find that defendants were the "makers" of certain misrepresentations or omissions made to FINRA in the Form 211 applications.

Material misrepresentations. Defendants argued that any misrepresentations that might have been made were not "material" under the law because the misrepresentations would not have been relevant or important to a reasonable investor in making an investment decision. The SEC disagreed and argued that Defendants' misrepresentations were material. The court agreed with the SEC that defendants were asking the court to second guess the jury's materiality determination. The jury considered the evidence and determined that the misrepresentations or omissions were material. The court found that it could not say that a reasonable jury could not have reasonably concluded that the misrepresentations would be material to a reasonable investor.

Misrepresentations made "in connection with" the purchase of securities. Defendants argued that because the alleged false statements were not made to the public, the misrepresentations were not made "in connection with" the purchase or sale of securities. Defendants pointed out that the Form 211 applications, and any correspondence related thereto, was between FINRA and the broker-dealer and was not publicly available. The court disagreed and found that a reasonable juror could find that the trial evidence demonstrated that defendants' misrepresentations or omissions to FINRA enabled the securities to be eligible for public quotation

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and thereby facilitated the purchase or sale of securities. This was sufficient to meet the "in connection with" requirement.

The case is No. 8:19-cv-448-VMC-CPT.

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Companies: Spartan Securities Group, Ltd.; Island Capital Management LLC

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