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Legal

LOSING STREAK FOR SEC'S INSIDER-TRADING CASES

Earlier this month, the Securities and Exchange Commission (SEC) dropped its insider-trading case against the former chairman of a health-care company who was accused of providing pending sale information to his friend who subsequently profited $94,000 by trading in the stock. Five days earlier, a Manhattan federal jury acquitted a hedge-fund manager of insider-trading charges, and a federal jury in California returned a "not guilty" verdict in the case of a solid-state data-storage executive accused of insider trading. Do the odds now favor going for broke before a jury instead of negotiating a settlement with the SEC?

Decade-Old Cases

Perhaps the SEC losses have to do with the fact that the cases recently brought to trial go back to events ranging from seven to ten years earlier: The hedge fund case — originally filed in 2006, thrown out by the trial judge in 2010, then revived by the appeals court in 2012 — relates to allegations stemming from a June 2001 phone call; last October's jury finding that a billionaire pro-basketball owner did not engage in insider trading had to do with allegations from 2004; and the 2012 trial against the former health-care company chairman was based on an alleged conversation held in 2007.

Regardless of the outcomes, it is clear that mere passage of time does not dissuade the SEC from filing cases. "We respect the jury's verdict but will continue to aggressively enforce the law when we believe the evidence supports the allegations," said an emailed announcement by SEC spokesman John Nester. For example, a case involving transactions by corporate insiders was brought after a six-year investigation and alleged illegal trading going all the way back to 1992.

Legal Fees Exceeded Settlement Offer

In the cases of the former health-care chairman and the hedge-fund manager, the defendants chose to spend more on legal fees and court costs than it would have cost them to settle — just to clear their names. However, a co-defendant in the health-care case who was initially facing $376,076 in civil penalties from the SEC over his $94,000 gain, in the end settled with the SEC for a $22,000 fine with no admission of guilt.

Down but Not Out

According to the SEC website:

> Insider trading continues to be a high priority area for the SEC's enforcement program. In recent years, the SEC has filed insider trading cases against hundreds of entities and individuals, including financial professionals, hedge fund managers, corporate insiders, attorneys, and others whose illegal tipping or trading has undermined the level playing field that is fundamental to the integrity and fair functioning of the capital markets.

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