

## Corporate & Financial Weekly Digest

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### Second Circuit Affirms Rule 11 Sanctions Award Pursuant to PSLRA

The U.S. District Court for the Second Circuit held that where a plaintiff and his counsel knowingly commenced a securities action in which the only purchase of an actual security occurred 18 years earlier, and failed to disclose that fact in the complaint, Rule 11 sanctions were warranted because the claim was clearly time-barred by the applicable statute of limitations.

Plaintiff John Libaire, Jr. and his attorney alleged in their complaint that, in addition to plaintiff's purchase of a single share of common stock 18 years earlier, Mr. Libaire's 2005 payment of annual dues to defendant North Fork Preserve, Inc. also constituted the purchase of a security. According to plaintiff, this later "purchase" established that his securities fraud claims were not time-barred.

Under Second Circuit law, a transaction may be deemed a security where there has been an investment in a common venture that is premised on a reasonable expectation of profits to be derived from the entrepreneurial or management efforts of others. The Second Circuit affirmed the district court's ruling that the payment of annual membership dues could not satisfy the "reasonable expectation of profits" element.

The Private Securities Litigation Reform Act requires district courts, at the conclusion of private actions arising under the federal securities laws, to make Rule 11 findings as to each party and each attorney. The Second Circuit determined that because plaintiff's arguments lacked support in the case law, and were "objectively unreasonable," it was patently clear that the claim had no chance of success under existing precedents.

These facts, along with plaintiff's failure to allege any viable misrepresentation on defendant's part, led the Second Circuit to affirm the award of sanctions for violating Rule 11 of the Federal Rules of Civil Procedure. In affirming the sanctions award, the court also took into account that plaintiff had previously commenced and lost state court actions asserting virtually identical allegations against the same defendants. Under these circumstances, the court found that the federal action was brought to harass defendants, and that sanctions against plaintiff and his counsel therefore were warranted. (*Libaire v. Kaplan*, No. 09-2659-cv, 2010 WL 3894711 (2d Cir. Oct. 6, 2010))