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SEC Enforcement Actions Not Subject to Same Reliance Requirements as Private Actions

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A Connecticut federal district court recently denied a motion for summary judgment by an individual, Gary Richetelli, seeking dismissal of claims brought in an enforcement action by the Securities and Exchange Commission. The SEC alleged that Richetelli carried out a fraudulent stock purchase scheme in violation of Section 10(b) of the Securities Exchange Act of 1934 by providing several New Haven Savings Bank depositors with the financing to obtain shares of newly-issued stock through the bank's initial public offering (IPO) in exchange for repayment of the loans in full shortly after the IPO, as well as payment of the majority of the profits from the sale of those shares. The terms of the IPO prohibited such arrangements and each of the depositors executed stock order forms in which they declared under oath that they were "purchasing solely for [their] own account, and there is no agreement or understanding regarding the sale or transfer of the shares or the right to subscribe for the shares."

In support of his motion for summary judgment, Richetelli argued that the Supreme Court's decision in *Stoneridge Inv. Partners v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), precludes the SEC from imposing primary liability under Section 10(b) and Rule 10b-5 where the misrepresentation was not made by the defendant or attributed to him at the time of its dissemination. In *Stoneridge*, the Supreme Court ruled that parties who aid and abet Section 10(b) violations cannot be held liable in suits brought by private individuals because the reliance element necessary for such a claim could not be satisfied if the alleged misrepresentation could not be attributed to the defendants.

Following several other district court decisions, the district court declined to extend *Stoneridge* to SEC enforcement actions, finding that primary liability could be imposed on a defendant in an enforcement action, as long as the defendant was sufficiently responsible for the misrepresentation. As the court pointed out, the Supreme Court's decision in *Stoneridge* was not intended to limit the reach of the SEC, but rather was meant to restrict the judicially-created private right of action so as not to "undermine Congress' determination that this class of defendants should be pursued by the SEC and not private litigants."

SEC v. Richetelli, 2010 WL 2802911 (D. Conn. July 12, 2010).

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