

ClientAlert

White Collar

February 2014

The Perils of Not Showing Up: Default Judgment Entered Against Two Former Siemens Executives for Record US\$1.46 Million in Combined Civil FCPA Penalties



On February 3, 2014, Judge Shira A. Scheindlin of the U.S. District Court for the Southern District of New York issued a default judgment in *U.S. Securities and Exchange Commission v. Sharef, et al.* against two former Siemens AG executives, Ulrich Bock and Stephan Signer. Unlike other defendants in the matter, Bock and Signer never appeared before the court in the matter, and were subsequently ordered to pay a combined US\$1.46 million—two of the largest Foreign Corrupt Practices Act penalties ever imposed upon individuals—for their respective roles in the well-known bribery scheme involving Siemens and government contracts in Argentina. The sheer size of the penalties begs the question—would it have been better for Bock and Signer to appear?

Dating back to activities of Siemens and its affiliates between 1996 and 2007, the U.S. Securities and Exchange Commission (“SEC”) filed suit against eight Siemens, Siemens S.A. (“Siemens Argentina”) and Siemens Business Services (“SBS”) executives in relation to their roles in “authorizing, negotiating, facilitating or concealing” bribe payments to Argentine public officials. On February 19, 2013, the former Siemens Argentina CEO Herbert Steffen succeeded in getting his case dismissed. Steffen, who appeared in the case to fight jurisdiction, successfully argued that the court lacked jurisdiction over him because the SEC did not establish that Steffen had sufficient contacts to the United States, nor would it be reasonable to require Steffen to defend himself in the United States. Three other defendants in the case, Bernd Regendantz, Uriel Sharef and Andres Truppel, settled with the SEC and paid substantially lower penalties, which amounted to US\$40,000 against Regendantz, US\$250,000 against Sharef and US\$80,000 against Truppel.

Neither Bock nor Signer settled with the SEC or defended themselves against the complaint. They were held in default on September 19, 2012, and Judge Scheindlin issued the final judgment against them on February 3, 2014, ordering a civil penalty of US\$524,000 each, two of the highest SEC penalties ever ordered against individuals, and an additional disgorgement of US\$413,957 from Bock. The U.S. judgment can be enforced against Bock and Signer in Germany, even though it was a default judgment.

Bock and Signer may not have had much basis for argument on the facts, given Siemens’ admissions in the criminal cases against the company in the United States and Germany. However, like Steffen, both Bock and Signer could have challenged the jurisdiction of the SEC. Both also had additional legal arguments they could have made—for example, Bock had limited involvement in the bribes by the time Siemens became publicly traded in the United States and fell under the SEC’s jurisdiction. If the legal arguments had failed,

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Bock and Signer potentially could have negotiated better settlements, as Sharef, Truppel and Regendantz did—or at least argued for lower penalties if they chose not to settle. Scheindlin’s judgment and the SEC’s papers notably provide no explanation as to why the US\$524,000 civil fine was appropriate, or why the penalties levied against Bock and Signer should be so much harsher than any other SEC individual defendants’ penalties in past FCPA matters.

By not appearing, Bock and Signer left the SEC’s case unchallenged as to its reasonability, both in its extensive jurisdictional reach and in its magnitude, despite Judge Scheindlin’s earlier sympathy to their co-defendant’s arguments. Indeed, co-defendants Regendantz, Sharef, and Truppel paid less in combined civil penalties than either Bock or Signer paid individually. This decision serves as a cautionary tale—individual defendants might fare far better if they appear and make those arguments available to them, or negotiate settlement with the SEC, rather than allow the court to use non-appearance as an opportunity to set an example.

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