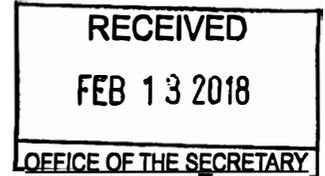


UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION



SECURITIES ACT OF 1933
Release No. 10440 / November 30, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 82178 / November 30, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4816 / November 30, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32929 / November 30, 2017

In Re:
Pending Administrative Proceedings
Order Number 3-17645

The Solicitor General took the position that Commission administrative law judges are inferior officers for purposes of the Appointments Clause, but recommended that the Supreme Court appoint an amicus curiae to defend the contrary judgement of the Court of Appeals for the District of Columbia Circuit.

A. Constitutional Avoidance:

Defendant contends that the federal courts avoid unnecessary adjudication of constitutional issues. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 294, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1982). Here, we must consider the Appointments Clause issue in Mr. Snisky's case.

In its opinion, the SEC concluded Mr. Snisky committed securities fraud. Mr. Snisky challenges the SEC's findings of securities fraud liability as arbitrary and capricious. The defendant attacks the SEC's opinion as a whole, however, including both his mail fraud and registration liability, is non-existent as the SEC has no jurisdiction over the defendant, because the sole argument attacking his registration liability is constitutional, we cannot avoid the Appointments Clause question. And because resolving this question relieves Mr. Snisky of all liability.

B. Appointments Clause Overview

The Appointments Clause states:

(The President) shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. U.S. Const. art. 11, § 2, cl. 2.

The Appointments Clause embodies both separation of powers and checks and balances. *Ryder v. United States*, 515 U.S. 177, 182, 115 S. Ct. 2031, 132 L. Ed. 2d 136 (1995) ("The Clause is a bulwark against one branch aggrandizing its power at the expense of another branch...."). 5 By defining unique roles for each branch in appointing officers, the Clause separates power. It also checks and balances the appointment authority of each branch by providing (1) the President may appoint principal officers only with Senate approval and (2) Congress may confer appointment power over inferior officers to the President, courts, or department heads but may not itself make appointments. 6

The Appointments Clause also promotes public accountability by identifying the public officials who appoint officers. *Edmond v. United States*, 520 U.S. 651, 660, 117 S. Ct. 1573, 137 L. Ed. 2d 917 (1997). And it prevents the diffusion of that power by restricting it to specific public officials. *Ryder*, 515 U.S. at 182; *Freytag*, 501 U.S. at 878, 883. (844 F.3d 1173) " The Framers understood... that by limiting the appointment power, they could ensure that those who wielded it were accountable to political force and the will of the people. " *Freytag*, 501 U.S. at 884.

To find violations of Sections 206(1), (2), and (4) of the Investment Advisers Act, the Commission required evidence from which it could find that petitioners made statements that were misleading either because they misstated a fact or omitted a fact necessary to clarify the statement, and that those misstatements or omissions were material.

SEC ALJ's Are Inferior Officers Under Freytag:

Following Freytag, defendant contends SEC ALJ's are inferior officers under the Appointments Clause. As the SEC acknowledges, the ALJ who presided over Mr. Snisky's hearing was not appointed by the President, a court of law, or a department head.

Freytag held that STJ's were inferior officers based on three characteristics. Those three characteristics exist here: (1) the position of the SEC ALJ was "established by Law," Freytag, 501 U.S. at 881 (quoting U.S. Const. art. II, §2, cl. 2); (2) "the duties, salary, and means of appointment... are specified by statute," *id.*; and (3) SEC ALJs "exercise significant discretion" in "carrying out ... important functions," *id.* at 882.

Administrative Law Judges are under both the probable original meaning of the clause and the Supreme Court precedents. "An inferior" officer is one "whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advise and consent of the Senate."

This view is consistent with the original meaning of the term and with the practices of the early Congresses see *NLRB v. Sw Gen*, In November 7, 2016 (137 S. ct. 929.) at 663-664, 117 S. ct. 1573 L.Ed. 2d 917;

The appointment clause, like all of the Constitutional Structural Provisions, "is designed first and foremost not to look look after interests of the respective branches, but to protect individual liberty" *NLRB v. Noel Canning*, 573 U.S. ..., 134 S.ct. 2550, 184 L. Ed. 2d. 538, 603 (2014).

There is no Statutory Basis For a Civil Penalty

1. This Case Was Not Properly Brought Under Section 15(b)(4)
Because Mr. Snisky Was Not a Licensed Professional

By its terms, a civil penalty can be imposed on Mr. Snisky under Section 21 B only if the case was brought properly under Section 15(b)(4) or (6).

The action against Mr. Snisky was brought improperly under Section 15(b)(4). Only registered securities professionals are subject to Section 15(b)(4). In Jacob Wonsover, 1999 WL 1000935 at *10, Rel. No. 34-1123 (March 1, 1999), aff'd, Wonsover v. SEC, 205 F. 3d 408 (D.C. Cir. 2000), the SEC interpreted Section 15(b)(4) as applying only to registered securities professionals, stating "Wonsover- like anyone else subject to a Section 15(b)(4) proceeding - is a registered professional in an industry suffused with regulation."

It is undisputed that Mr. Snisky was not a registered securities professional.

Mr. Snisky Was Not Alleged To Be, Nor Is He, A Person Associated With A Broker.

Section 15(b)(6), as relevant here, is applicable "any person... who is associated... with a broker..."

Mr. Snisky had no notice that the SEC would contend that he was both a broker and a person associated with a broker. The OIP neither asserted, nor alleged facts showing, that Mr. Snisky was a person associated with a broker.

The finding that Mr. Snisky was subject to Section 15(b)(6) as a "person associated with a broker" contravenes the statutory language.

A "person associated with a broker " is defined in Section 3(a)(18) of the Exchange Act, 15 U.S.C. § 78c(a)(18), to include a person "controlling " a broker. The SEC found that Mr. Snisky was both a broker and a person associated with himself, because he controlled himself. Opinion, JA00474-5. No authority is cited in support of that novel interpretation.

A duality between a broker and a person controlling the broker is implicit in the statutory scheme. See, City of Philadelphia, 264 F.3d at 1270-1 (discussing control person liability under Section 20(a) of the Exchange Act); Kalnit v. Eichler, 85 F. Supp.2d 232, 246 (S.D.N.Y. 1999)(same). Since Mr. Snisky was not registered, either as a broker or a person associated with a broker, the SEC, acted arbitrarily and capriciously when, contrary to its holding in Jacob Wonsover, 1999 WL 1000935, it subjected Mr. Snisky to sanctions under a standard which it previously held could be imposed only on registered professionals.

Conclusion And Request For Relief:

Defendant can not point to anything in the securities laws that suggests Congress intended that Commission ALJ's be appointed as if officers. The reference to "Officers of the Commission" in 15 U.S.C. 77u, but there is no indication Congress intended these officers to be synontmous with "Officers of the United States" under the Appointment Clause, Civil Service Reform Act of 1978, 95-454,92 stat. III.

The SEC complaint does not comply with subject matter Jurisdiction, refering to the "Power to hear a case "774 F. Supp. 2d 1122: In Re Crocs, Inc. Sec. Litig: Feb 28, 2011.

Although defendant took a plea, the committee added an exception to subdivision (e)(6) of the bargaining process that provides: evidence of a plea of guilty,... to the crime charged or any crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. Federal rules of criminal procedure, Title IV. Arraignment and preparation for trial trial rule 11(e § 6). Notes of committee on the Judiciary on 1975 amendments house report No. 94-247. Thus the SEC must, on its own, with full due process to the defendant, and in the interest of the public, find that the defendant acted as alleged and acted with an intent to deceive, manipulate, or defraud. SEC v. Steadman, 967 F. 2d. 636, 641, 296, U.S. App. D.C. 269, 1992. Quoting Ernst & Ernst v. Hochfelder 425 U.S. 185, 194n. 12 S. ct. 1375 47 L. Ed. 2d 668 (1976). Material Intent and fact(s) are indispute, an for example, Mr. Greeot† was a partner as defined in the Operating Agreement for Arete LLC, see attached pg. 34.

Therefore the SEC's order is infected with a structural constitutional defect arising from the improper appointment of Administrative Law Judges. Moreover, the Opinion and Order made findings without fair notice and in violation of the SEC's Rules of Practice, applied incorrect legal standards, were not supported by substantial evidence, and were arbitrary and capricious.

Decision 2015 SEC Lexis 3628, (WL) at 17; 15 U.S.C. § 80b-6(1), (2), (4). In addition, for a violation of Section 206(1), the Commission needed evidence that those statements were made with scienter.

Decision 2015 SEC Lexis 3628, (WL) at 17.

Officers- definition of appointment clause:

For purposes of the Federal Constitution's appointments clause (Art II, § 2, cl 2)-which empowers the President to appoint certain "Officers of the United States" with the advice and consent of the Senate, while providing that Congress may by law vest the appointment of "inferior Officers" of the United States in "the President alone, in the Courts of Law, or in the Heads of Departments"-any appointee exercising significant authority pursuant to the laws of the United States is an "Officer of the United States," and such person must therefore be appointed in the manner prescribed by the appointments clause.

Creation of office-appointment

Despite Congress' authority under Article II of the Federal Constitution to create offices and to provide for the method of appointment to those offices, Congress' power is inevitably bounded by the express language of Article II, and unless the method Congress provides comports with Article II, the holders of those offices will not be "Officers of the United States" within the meaning of Article II.

For these reasons, the Opinion and Order should be vacated and this civil matter dismissed.

Dated this 29th day of January, 2018.

Respectfully submitted,



Gary C. Snisky

Registration number- [REDACTED]

[REDACTED]
P.O. Box [REDACTED]

Joint Base MDL, NJ [REDACTED]

CERTIFICATE

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, consisting of 34 pages, including the Title Page and the attached Exhibits, constitutes the Operating Agreement of ARETE, LLC, adopted by the Members of the company as of July, 2011. In witness whereof, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

CO-FOUNDERS & MANAGING DIRECTORS:

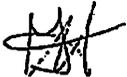
Richard W. Grecott

Date: July 1, 2011



Gary C. Snisky

Date: July 1, 2011



Service List

On January 29, 2018, the foregoing pending administrative proceeding was sent to following parties and other persons entitled to notice:

Office of the Secretary
Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, DC 20549-2557

Honorable Brenda Murray, Chief Judge
100 F Street, N.E.
Mail Stop 2580
Washington, DC 20549

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2018, I forward a true and correct copy of the foregoing pending administrative proceeding that all statements are true.

Respectfully submitted,



Gary C. Snisky