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SECURITIES FRAUD - OHIO

United States Securities and Exchange Commission v. Crowe

United States District Court, S.D. Ohio, Eastern Division - October 20, 2016 - F.Supp.3d - 2016 WL 6125401 - Fed. Sec. L. Rep. P 99, 438

The Securities and Exchange Commission (SEC) brought action against lobbyist, alleging violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933. Lobbyist moved to dismiss for failure to state a claim.

The District Court held that:

- SEC was entitled to bring action in federal court against lobbyist, even though its complaint referred to violation of state campaign finance laws;
- SEC sufficiently alleged misrepresentations and omissions made by lobbyist's client and its principal occurred "in connection with" securities sale, as required to state a claim for aiding and abetting securities fraud;
- SEC sufficiently alleged that lobbyist caused concealed campaign contributions to be made, which coincided with a securities transaction, as required to state a claim for securities fraud; and
- SEC sufficiently alleged that lobbyist had a general awareness that his role was part of an overall activity that was improper, as required to state a claim for aiding and abetting securities violations.

Securities and Exchange Commission (SEC) action against lobbyist, alleging he engaged in a "pay to play" scheme that resulted in securities fraud was not precluded, even though Adviser's Act rule governing "pay to play" practices by investment advisers did not apply to conduct by lobbyist. The SEC did not bring action against lobbyist under the Adviser's Act rule, which was not the exclusive vehicle by which the SEC could bring enforcement actions based on "pay to play" allegations.

Securities and Exchange Commission (SEC) was entitled to bring action in federal court against lobbyist, alleging violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933, even though its complaint also alleged that lobbyist knowingly violated state campaign finance laws. The SEC did not bring its case under federal or state campaign finance laws, so the question for the District Court on lobbyist's motion to dismiss for failure to state a claim was whether the SEC stated a claim that lobbyist violated federal securities laws, as alleged in the complaint, given that lobbyist did not argue that Ohio's campaign finance statute limiting contributions preempted federal securities laws.

The Securities and Exchange Commission (SEC) sufficiently alleged that misrepresentations and omissions made by lobbyist's client and its principal occurred in connection with an offer, sale, or purchase of securities, as required to state a claim for aiding and abetting securities fraud against lobbyist. While lobbyist argued that the omissions and misrepresentations were made to facilitate his client's receipt of contracts to be a subcustodian of state employees' pension funds, the subcustodian services were inextricably intertwined and integral to facilitating and effecting transactions in securities on behalf of the pension funds in the subcustodian's care, and because of the fraud alleged in the SEC's complaint, state pension funds were told that lobbyist's client would be the most favorable custodian and executer of their securities transactions which was material to

the decision to buy and sell through lobbyist's client.

The Securities and Exchange Commission (SEC) sufficiently alleged that lobbyist repeatedly caused concealed campaign contributions to be made on behalf of his client, which coincided with a securities transaction, as required to state a claim for securities fraud. The alleged fraud "coincided" with the purchase or sale of securities because the fraud involved influencing the state Treasurer's choice of lobbyist's client to serve as subcustodian of state pension funds, which bore an adequate connection to the purchase or sale of securities, given that the services of a subcustodian were inextricably intertwined with transactions in securities on behalf of the pension funds.

The Securities and Exchange Commission (SEC) sufficiently alleged that lobbyist had a general awareness that his role was part of an overall activity that was improper, as required to state a claim for aiding and abetting securities violations by lobbyist's client and its principal. Though lobbyist was not alleged to have seen the false "no improper influence" certifications signed by his client through its principal, given lobbyist's fundraising experience, alleged filtering of illegal payments to state Treasurer's campaign through his own bank account, and alleged reimbursement of campaign donations, if true, constituted extraordinary conduct requiring less evidence of his complicity, and lobbyist allegedly took pains to cover his tracks.