

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

SEC v. Charles Johnson, Jr.

SEC v. Charles Johnson · No. 09-5399 · Decided September 22, 2011

OPINION

PER CURIAM.

United States Court of Appeals F O R T H E D I S T R I C T O F C O L U M B I A C I R C U I T
_____ No. 09-5399 September Term 2011 1:05-cv-00036-GK Filed On: September 22,
2011 Securities and Exchange Commission, Appellee v. Charles Johnson, Jr., Appellee Chris
Benyo, Appellant Michael Kennedy, et al., Appellees BEFORE: Sentelle, Chief Judge, and
Ginsburg and Kavanaugh, Circuit Judges ORDER Upon consideration of the petition for rehearing
filed by appellee on August 12, 2011, and the response thereto, it is ORDERED that the petition
be denied.

It is FURTHER ORDERED, on the court’s own motion, that the opinion issued June 28, 2011, be
amended as follows: Slip Op. p. 11, first full paragraph, beginning at line 7, delete the following:
“Although we noted there in a dictum that none of the parties had been prejudiced by the error, id.
at 30, we actually held objections to venue must be “timely and sufficient” and no party had made
and preserved that objection, id. at 31; see Freeman v. Bee Mach.

Co., 319 U.S. 448, 453 (1943) (venue must be “seasonably asserted”).” United States Court of
Appeals F O R T H E D I S T R I C T O F C O L U M B I A C I R C U I T _____ No. 09-5399
September Term 2011 And insert in lieu thereof: “We noted there in a dictum that none of the
parties had been prejudiced by the error, id. at 30: not the plaintiffs, because they had failed to
make and preserve a timely objection to venue, and not the Government, because we ruled in its
favor on the merits of its appeal.

Here, as we have seen, Benyo preserved his objection to venue at every opportunity and the error
in venue would be “harmless” to him, in the sense in which we used that term in Whittier, only if
we were also to rule in his favor on the merits.” Per Curiam FOR THE COURT: Mark J. Langer,
Clerk BY: /s/ Jennifer M. Clark Deputy Clerk Page 2