UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Securities and Exchange Commission v. Matthew J. Werthe dba HSR Wealth Management

SEC v. Werthe · No. 23cv0815-L-DDL · Decided March 12, 2025

SUMMARY

The United States District Court for the Southern District of California granted the SEC's motion for summary adjudication as to Matthew J. Werthe's liability on claims arising from alleged cherry-picking of securities trades and false or misleading statements to investment-advisory clients. The court concluded that the SEC established the elements of claims under the federal securities laws and that Werthe failed to raise a genuine dispute of material fact. The SEC sought injunctive relief, disgorgement, and civil penalties, with those remedies left for further proceedings.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	M. James Lorenz
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 12, 2025
DOCKET	23cv0815-L-DDL
DISPOSITION	other
PROCEDURAL POSTURE	The SEC moved for summary adjudication of Defendant's liability on all five causes of action in a federal securities-fraud action. The court decided the motion on the papers without oral argument.
STANDARD OF REVIEW	Summary judgment or adjudication is appropriate when the record shows no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Because the SEC bore the burden of proof at trial, it had to affirmatively establish the absence of a genuine dispute on each material issue; after that showing, Defendant had to identify specific facts creating a genuine dispute. The court was required to view evidence and reasonable inferences favorably to Defendant and could not resolve genuine factual disputes or weigh credibility.

PRECEDENTIAL VALUE	unpublished
PARTIES	Securities and Exchange Commission

TOPICS

summary judgment · commercial litigation · administrative law · remedies · civil procedure

PRACTICE AREAS

securities litigation · administrative law · civil procedure · investment adviser regulation · remedies

QUESTIONS PRESENTED

1. Whether the SEC established liability as a matter of law under Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) based on cherry-picking and related deceptive statements.
2. Whether the SEC established liability as a matter of law under Sections 17(a)(1) and (3) of the Securities Act based on the alleged fraudulent scheme.
3. Whether the SEC established liability under Section 10(b) and Rule 10b-5(b), and Section 17(a)(2) of the Securities Act, based on false or misleading client disclosures.
4. Whether the SEC established liability under Sections 206(1) and (2) of the Investment Advisers Act based on cherry-picking and false or misleading statements.
5. Whether Defendant raised a genuine dispute of material fact concerning cherry-picking, the falsity of the disclosures, scienter, materiality, or use of interstate commerce.

HOLDINGS

1. Summary adjudication is proper when the record demonstrates no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law; a nonmoving party must present specific competent facts creating a genuine dispute.
2. Defendant's cherry-picking scheme and related false or misleading statements constituted prohibited fraudulent or deceptive conduct in connection with the offer, purchase, or sale of securities through interstate commerce. The SEC established liability under all asserted fraudulent-scheme provisions.
3. The SEC established scienter for the Section 10(b), Rule 10b-5(a) and (c), Section 17(a)(1), and Section 206(1) claims, and Defendant failed to raise a genuine dispute concerning his intent or recklessness.
4. Defendant was liable under Section 10(b) and Rule 10b-5(b), and Section 17(a)(2), because he made material false or misleading statements concerning personal trading, trade aggregation, and prioritization of client interests, using interstate commerce in connection with securities transactions.
5. Defendant was liable under Sections 206(1) and (2) of the Investment Advisers Act because he used interstate commerce to engage in a scheme and course of conduct that defrauded or operated as fraud upon his clients.

KEY QUOTATIONS

> *"Summary judgment or adjudication of issues is appropriate if depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law."* (at 3)

> *"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge."* (at 4)

> *"For the reasons stated above, the SEC's motion for summary adjudication of Defendant's liability under each cause of action alleged in the Complaint is granted."* (at 29)

FACTUAL BACKGROUND

Werthe was the sole owner, employee, and compliance officer of HSR Wealth Management, a California-registered investment adviser, and exercised discretionary authority over more than 50 client accounts holding over $12 million in assets. He used a block trading account to aggregate trades for clients and his own account, then allocated trades after he could observe whether their prices had risen or fallen. Expert analysis showed that he disproportionately allocated profitable trades to his own account and unprofitable trades to client accounts, producing materially different allocation returns. His client brochures also falsely stated or implied that he did not trade the same securities as clients, generally did not aggregate trades, and put client interests first.

PROCEDURAL HISTORY

The SEC filed an action alleging that Matthew J. Werthe, an investment adviser, cherry-picked profitable trades for his personal account, allocated unprofitable trades to client accounts, and made false or misleading disclosures. Werthe opposed the SEC's motion for summary adjudication pro se. The court granted the motion as to liability on every cause of action, leaving requested remedies for further proceedings.

DISPOSITION

other

CASES CITED

- Aaron v. SEC, 446 U.S. 680, 687, 701-02 (1980)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 255 (1986)
- C.A.R. Transp. Brokerage Co., Inc. v. Darden Rest., Inc., 213 F.3d 474, 480 (9th Cir. 2000)
- Rookaird v. BNSF Ry. Co., 908 F.3d 451, 459 (9th Cir. 2018)
- Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)
- Soto v. Sweetman, 882 F.3d 865, 872-73 (9th Cir. 2018)
- Tolan v. Cotton, 572 U.S. 650, 651, 656-57 (2014)
- Hangarter v. Provident Life, 373 F.3d 998, 1016, 1018 (9th Cir. 2004)
- Lorenzo v. SEC, 587 U.S. 71, 78-79 (2019)
- SEC v. World Tree Fin., L.L.C., 43 F.4th 448, 460-64 (5th Cir. 2022)

- SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001)
- Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976)
- SEC v. Platform Wireless Int'l Corp., 617 F.3d 1072, 1092 (9th Cir. 2010)
- Hollinger v. Titan Capital Corp., 914 F.2d 1546, 1569 (9th Cir. 1990) (en banc)
- Herman & MacLean v. Huddleston, 459 U.S. 375, 390 n.30 (1983)
- Vucinich v. Paine, Webber, Jackson & Curtis, Inc., 739 F.2d 1434, 1436 (9th Cir. 1984)
- Scott v. Harris, 550 U.S. 372, 380 (2007)
- Janus Cap. Group v. First Derivative Traders, 564 U.S. 135, 142 (2011)
- Vernazza v. SEC, 327 F.3d 851, 859-60 (9th Cir. 2003)
- Transam. Mtg. Advisors, Inc. v. Lewis, 404 U.S. 11, 17 (1979)
- Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co., 404 U.S. 6, 12-13 (1971)