UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Securities and Exchange Commission v. Afriyie

No. 19-17-cv, United States Court of Appeals for the Second Circuit (December 17, 2019)

SUMMARY

The Second Circuit affirmed summary judgment for the SEC in a civil insider trading enforcement action, holding that the defendant's criminal conviction and forfeiture verdict collaterally estopped him from contesting liability. The court declined to resolve whether the *Monarch Funding* presumption against applying collateral estoppel to sentencing findings extends to forfeiture verdicts, because the SEC presented unrebutted evidence—including the "overwhelming" evidence from the criminal trial—establishing all trades were unlawful and supporting the disgorgement and civil penalty amounts. The judgment permanently enjoined violations of § 10(b) and Rule 10b-5, ordered disgorgement of $1,670,483.98 (deemed satisfied by criminal forfeiture/restitution), and imposed a $1,576,445.98 civil penalty.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	José A. Cabranes; Christopher F. Droney; Christina Reiss
JURISDICTION	Federal
DECIDED	December 17, 2019
DOCKET	19-17-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a grant of summary judgment in favor of the SEC in a civil enforcement action.
STANDARD OF REVIEW	We review a district court’s grant of summary judgment de novo.
PRECEDENTIAL VALUE	Unpublished
PARTIES	John Afriyie v. Securities and Exchange Commission

TOPICS

securities fraud · civil procedure · summary judgment · res judicata

PRACTICE AREAS

Securities Law | Civil Procedure | Appellate Practice

QUESTIONS PRESENTED

1. Whether the district court properly granted summary judgment based on collateral estoppel from the criminal forfeiture verdict.
2. Whether, in the alternative, the SEC's unrebutted evidence supports summary judgment.

HOLDINGS

1. The district court properly granted summary judgment because the SEC introduced unrebutted evidence establishing that all of Afriyie's trades were unlawful and that Afriyie failed to create a genuine dispute of material fact.

KEY QUOTATIONS

> *"the SEC introduced unrebutted evidence establishing that all of Afriyie's trades were unlawful."* (at 3)

> *"We review a district court's grant of summary judgment de novo."* (at 2)

FACTUAL BACKGROUND

Afriyie was convicted of insider trading based on misappropriation of material nonpublic information. The SEC brought a civil enforcement action seeking injunctive relief, disgorgement, and penalties. The district court granted summary judgment to the SEC on collateral estoppel grounds, relying on the criminal conviction and forfeiture verdict.

PROCEDURAL HISTORY

The SEC filed a civil enforcement action against John Afriyie for insider trading. The District Court (Jed S. Rakoff, J.) granted summary judgment in favor of the SEC, concluding that Afriyie's criminal conviction and forfeiture verdict collaterally estopped him from contesting civil liability. The court entered a judgment permanently enjoining Afriyie from violating §10(b) and Rule 10b-5, ordering disgorgement of $1,670,483.98, and a civil penalty of $1,576,445.98. Afriyie appealed.

DISPOSITION

affirmed

CASES CITED

- Trikona Advisers Ltd. v. Chugh, 846 F.3d 22 (2d Cir. 2017)
- Pippins v. KPMG, LLP, 759 F.3d 235 (2d Cir. 2014)
- S.E.C. v. Monarch Funding Corp., 192 F.3d 295 (2d Cir. 1999)
- United States v. U.S. Currency in Amount of $119,984.00, More or Less, 304 F.3d 165 (2d Cir. 2002)
- Libretti v. United States, 516 U.S. 29 (1995)

- United States v. Afriyie, 929 F.3d 63 (2d Cir. 2019)
- Riley v. United States, 78 F. App'x 774 (2d Cir. 2003)