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4th Circ. Told It Erred In Reviving SEC's Insider Trading Suit

By **Jessica Corso**

Law360 (April 11, 2023, 9:55 PM EDT) -- A mortgage broker who scored a rare midtrial defeat of insider trading allegations is urging the Fourth Circuit not to open up the possibility of a second trial, arguing that the appeals court made factual errors when it revived the U.S. Securities and Exchange Commission's case against him in February.

Christopher Clark, whom the SEC accused of profiting from inside information passed to him by his brother-in-law, appealed to the Fourth Circuit on Monday for a rehearing of his case.

Two months ago, the circuit court **revived the SEC's suit** against Clark after a district court judge handed down **a rare midtrial defeat** against the agency.

The appellate panel said the district court judge was wrong to rule on the case instead of sending it to the jury, which had enough evidence to potentially find Clark had violated insider trading laws.

But Clark said to come to that conclusion, the circuit court had made factual errors in its analysis of the case.

"Of the nine facts the panel relies on to determine that a reasonable jury could find Clark liable, two are incorrect and misapprehend material facts and four overlook material facts," according to the defendant's **petition** on Monday for a rehearing.

Clark took aim at the panel stating that the jury could have found that he traded on insider information because he "emptied his wife's retirement account" to purchase stock options before the public announcement of a multibillion-dollar merger.

The panel said a reasonable jury could have used that information to infer that Clark was aggressively trading "in a way that would be reckless if he did not have inside information."

But Clark said Monday that he did not empty his wife's retirement account to fund his trades. The couple had five retirement accounts that held hundreds of thousands of dollars and the account Clark tapped to pay for some of the trades contained only $4,463, according to the petition.

The panel did mention that the retirement account Clark liquidated contained around $4,000, but he took exception to a later paragraph stating he had "emptied" his wife's account.

Clark also disagreed with the panel's finding that a reasonable jury could have determined that his brother-in-law, William Wright, found out about the merger before it was public and before Clark made the trades.

The merger in question was a 2017 deal between management consulting company Corporate Executive Board Inc. and Gartner Inc., worth roughly $2.6 billion.

Wright was the corporate controller for Corporate Executive Board, or CEB, when Clark began purchasing call options on CEB stock in December 2016.

The SEC said Clark made more than $200,000 when CEB's stock price rose following the merger announcement. The agency claims Clark knew about the merger before the public because Wright told him about it.

Clark's attorneys have said the agency didn't prove that Wright knew about the merger before Clark purchased the call options or that he had passed that information onto Clark.

But the Fourth Circuit said Wright sent emails to recruiters stating that he had been working on the merger before December 2016.

Clark on Monday said the SEC didn't present those emails at trial and couldn't point to any other documents that suggested Wright was working on the merger before mid-December.

Wright was also sued by the SEC and paid a $240,000 fine without admitting liability, according to the court record. He was listed as a possible witness for the SEC at trial but didn't get called to testify before U.S. District Judge Claude M. Hilton threw out the case in December 2021, according to court records.

John Reed Stark, former chief of the SEC's Office of Internet Enforcement and a senior lecturing fellow at
Duke University School of Law, told Law360 following Judge Hilton's decision that he couldn't recall any other SEC insider trading trial that ended in the defendant's favor without that defendant even having to put on evidence.

In reversing that decision, the Fourth Circuit left open the possibility of a second trial — though the SEC declined to comment on whether it would pursue that option.

The SEC also declined to comment on Clark's petition.

The SEC is represented in-house by David Lisitza, Dominick Freda and Michael Conley.

Clark is represented by Mark D. Cummings, Adam Collins, Nicole Johnson and David Sher of Sher Cummings & Ellis LLP.

The case is SEC v. Christopher Clark, case number 22-1157, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Rich Mills.

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