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In Victory for WLF, U.S. Supreme Court Limits SEC's Authority to Punish Long-Ago Activities

(Kokesh v. Securities and Exchange Commission)

“Congress has established a five-year limitations period for the enforcement of penalties. The Supreme Court correctly held that SEC cannot evade that limitation by giving a new name to its penalties.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Supreme Court held today that the Securities and Exchange Commission may not seek “disgorgement” of gross income allegedly derived from securities-law violations that occurred decades ago. The decision in *Kokesh v. Securities and Exchange Commission* was a victory for WLF, which filed a brief urging reversal of an appeals court decision that upheld SEC’s position.

The Court agreed with WLF that a federal statute, 28 U.S.C. § 2462, imposes a strict five-year statute of limitations on any “penalty” sought by SEC, and that the term “penalty” encompasses a claim for disgorgement. This decision imposes significant restrictions on a broad range of federal agencies (not simply SEC) because § 2462 imposes a five-year catch-all limitations period on *any* federal enforcement action to which no other statute of limitations explicitly applies.

The petitioner in this case was alleged to have defrauded customers over an 11-year period, from 1995 to 2006. But SEC did not file an enforcement action against him until 2009. All nine justices unanimously agreed that § 2462 barred SEC from seeking “penalties” or “forfeitures” for activities that occurred more than five years before the date on which it filed suit. The High Court rejected SEC’s claim that requiring a wrongdoer to pay to the government all his allegedly ill-gotten income (termed “disgorgement” by SEC) did not constitute a “penalty.” In light of that holding, the Court did not consider whether such disgorgement would constitute a “forfeiture.”

The Court said that SEC can reach back indefinitely in time to require wrongdoers to provide restitution to fraud victims but not (as here) simply to punish a wrongdoer by depriving him of all funds allegedly derived from improper activity. WLF’s brief argued that statutes of limitations serve important goals; they permit citizens to arrange their affairs secure in the knowledge that they won’t suddenly face sanctions based on long-ago events.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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