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Ex-Informant Wants SEC Held In Contempt Over Suit Filing

By **Rachel Rippetoe**

Law360 (November 3, 2021, 4:22 PM EDT) -- A former government informant asked a New Jersey federal court Tuesday to hold the U.S. Securities and Exchange Commission in contempt for supposedly violating a court order by filing a federal lawsuit in Florida over his alleged role in penny stock manipulation schemes that should have been filed as an amended complaint in the Garden State last year.

Guy Gentile, who was a securities informant for the FBI, U.S. Department of Justice and the SEC from 2012 to 2016, is asking the court to demand the SEC explain why it shouldn't be held in contempt for purportedly ignoring the New Jersey district court's order to amend its complaint against Gentile for Securities Act violations within 20 days and instead filing a new suit with nearly the same complaint and same requested relief in the Southern District Court of Florida.

"Failure to file a second amended complaint in this action and instead filing a reworked complaint in a different federal court clearly and directly violated the Court's Order," a memo Gentile filed Tuesday supporting the motion read.

Gentile said the court should order the SEC to show why it should not be held in contempt, dismiss the case in Florida and impose a \$175 a day fee for every day in which the commission does not dismiss its case.

In September 2020, Judge Jose Linares sided with Gentile, who is the CEO of a Bahamas-based online brokerage firm, dismissing the SEO's suit and saying that injunctions were not needed to prevent him from breaking securities law in the future.

Judge Linares suggested, however, that if the SEC wants the court to consider its allegations, it might consider including more specific information about Gentile's presence in the securities industry in the Bahamas in a further amended complaint.

The SEC did not submit this amended complaint within 20 days and the case was closed on Oct. 21, 2020.

But in March 2021, the commission filed another complaint against Gentile in a Florida federal court, seeking injunctive relief for Gentile's conduct beginning in 2012 and ending no later than 2016. Therefore, Gentile claims, the SEC is coming after him for the same conduct the commission accused him of in its amended complaint in New Jersey.

"This Court made clear... that the SEC 'must' include its allegations related to Gentile's (and the Bahamian broker-dealer's) purported misconduct in a second amended complaint filed within 20 days of the Order," the memo said. "Rather than abide, the SEC forum shopped, ultimately filed an untimely, reworked complaint in the Southern District of Florida."

This is at least the SEC's third attempt at suing Gentile for his alleged securities violations. The commission first filed suit in 2016, accusing him of being involved in two penny-stock manipulation schemes, one in 2007 involving the stock of Raven Gold Corporation and one in 2008 involving the stock of Kentucky USA Energy, Inc.

Gentile motioned to dismiss, arguing that because the conduct happened more than five years before the complaint was filed, the SEC had missed the statute of limitations to seek punitive damages. The court agreed and dismissed the case but gave the agency a chance to amend its complaint.

The SEC amended the complaint, alleging that Gentile's Bahamian broker-dealer was not registered with the SEC and citing misconduct from Gentile beginning in 2012.

Gentile challenged these allegations, pointing out that he had been working for the government during the years the SEC claimed he was violating the law.

The ex-informant said that his cooperation led to the prosecution of a number of high-profile criminal and securities fraud cases and allowing the FBI and SEC access to information about his Bahamian broker-dealer played a significant role in these operations.

The FBI and SEC not only actively monitored his Bahamian brokerage company, but they also "utilized it pursuant to these cooperation agreements to ensnare securities violators with Gentile's assistance," Gentile said.

"The agencies received everything they asked for from Gentile promptly and without question," the memo said. "Accordingly, any purported securities law violations perpetrated by Gentile would have to had occurred in plain sight of these agencies. Still, the Florida Complaint alleges that 'Gentile hatched his plan in early 2012.' This, of course, begs the question how it could be that the SEC — an agency tasked with investor protection — permitted this ongoing securities law violation for nine years?"

Representatives for Gentile or the SEC did not immediately respond to requests for comment.

Gentile is represented by Adam C. Ford of Ford O'Brien LLP.

The SEC is represented by Jorge G. Tenreiro, Nancy Andrews Brown, Simona K. Suh and Thomas Peter Smith Jr. of the U.S. Securities & Exchange Commission.

The case is Securities and Exchange Commission v. Gentile, case number 2:16-cv-01619, in the U.S. District Court for the District of New Jersey.