



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-Informant Says Florida Court Can't Hear SEC Suit

By **Bill Wichert**

Law360 (December 2, 2021, 8:30 PM EST) -- A former government informant has told a Florida federal court it lacks jurisdiction over claims from the U.S. Securities and Exchange Commission that he ran a Bahamas-based broker-dealer designed to evade U.S. day trading regulations, claiming he was not involved with the business while living in the Sunshine State.

Amid his related bid to hold the agency **in contempt** for allegedly violating a New Jersey federal court order, Guy Gentile on Wednesday raised that jurisdictional challenge in asking the Florida court to toss an SEC complaint alleging he committed securities violations while operating SureTrader between March 2016 and November 2019.

The court is the wrong venue for those allegations since Gentile claims he had nothing to do with SureTrader during the roughly six-month stretch that he lived in Miami between March and September 2016, according to his motion brief. Gentile lived outside of Florida during the rest of the time period in question, the brief states.

About three months before that Florida stay, Gentile resigned as president and director of SureTrader in December 2015, and he had no involvement in the business until after an indictment was dismissed against him in New Jersey in January 2017, the brief states.

His time spent living in Florida "does not give the court personal jurisdiction over Gentile, since Gentile was not acting as a control person of SureTrader during the time he lived in Florida nor was he conducting any other business, committing any tort, or taking any actions alleged to have violated the securities laws," according to the brief.

"Any relevant alleged acts occurred while Gentile lived outside of Florida and the complaint does not tie any of these alleged acts to Florida at all," the brief states.

Gentile further argued that the complaint included a single false allegation tying him to Florida, namely that he "directed the formation" of West Palm Beach, Florida-based MinTrade Technologies LLC. That entity was "created for the purpose of facilitating and concealing the movement of U.S.-based customer funds to SureTrader," the complaint said.

Gentile claimed in his brief that he "did not direct anyone to form MinTrade Technologies."

The dismissal bid marks the latest development in Gentile's long-running feud with the SEC.

Gentile previously faced criminal charges and a civil complaint from the SEC in New Jersey federal court with respect to his alleged role in penny stock manipulation schemes. After he beat both sets of claims, the Third Circuit in September 2019 revived the civil case.

About a year later, U.S. District Judge Brian R. Martinotti in New Jersey granted Gentile's motion to dismiss the suit after concluding that the agency **failed to back up its request** for injunctive relief of an "obey-the-law" order and a bar on trading penny stocks. The judge gave the SEC until Oct. 20, 2020, to file a second amended complaint, but the agency declined to do so.

After the SEC **launched** the Florida action in March, Gentile last month called for Judge Martinotti to hold the agency in contempt for bringing that lawsuit rather than including its allegations in an

amended complaint in the New Jersey case, court documents state. He contended that the filing of the Florida case violated the judge's ruling.

In a Nov. 24 brief on his contempt motion, Gentile argued that the judge "has the authority to enjoin the SEC from ignoring this court's order and filing another action involving the same allegations and relief in another court after dismissal of them here."

"To be clear, Gentile does not ask that this court enjoin or otherwise interfere with or entangle itself with the authority of another district court. He merely asks this court to exercise authority over a litigant, the SEC, who pursued allegations first in this jurisdiction and now improperly seeks to pursue those same exact allegations in a second jurisdiction after a final order from this court," according to the brief.

SureTrader also was named as a defendant in the Florida case, but it has defaulted, court records show.

The SEC and counsel for Gentile declined to comment Thursday.

The SEC is represented in-house by Alice K. Sum.

Gentile is represented by Dayliset Rielo of The Rielo Law Firm LLC and Adam C. Ford and Matthew A. Ford of Ford O'Brien LLP.

The case is Securities and Exchange Commission v. MintBroker International Ltd. et al., case number 1:21-cv-21079, in the U.S. District Court for the Southern District of Florida.

--Editing by Daniel King.