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## Fla. Judge Won't Sanction SEC In Suit Against Ex-Informant

By **Carolina Bolado**

Law360, Miami (August 1, 2022, 5:08 PM EDT) -- A Florida magistrate judge said Monday she did not see enough evidence to warrant sanctioning the U.S. Securities and Exchange Commission over discovery violations alleged by a former government informant who is accused of running a Bahamas-based broker-dealer designed to evade U.S. day trading regulations.

In a hearing conducted on Zoom, U.S. Magistrate Judge Alicia Otazo-Reyes denied Guy Gentile's request to sanction the SEC over emails and documents provided to the SEC by two former employees of SureTrader.

Gentile, who is facing SEC allegations that he committed securities violations while operating SureTrader between March 2016 and November 2019, had asked for dismissal of the complaint as a sanction for the SEC's use of what he said were stolen documents provided by disgruntled employees, but Judge Otazo-Reyes said that at this point there wasn't grounds for sanctions, given the SEC attorney's explanation that the agency had not yet examined the documents.

"I will deny the motion for sanctions without prejudice due to the fluidity of the situation at this time," Judge Otazo-Reyes said. "For a sanction of dismissal, there needs to be a very clear record to support that, and I don't see such a clear record before me."

In the hearing, Gentile's attorney Adam Ford said that he was notified May 9 by the SEC that the agency had received about 11,000 emails from one ex-employee of SureTrader and 33,000 documents from another ex-worker, both of whom had turned them in voluntarily.

The company had an employee handbook and corporate guidelines that are "as clear as day that when you leave employment all corporate records must be returned or destroyed," he said.

"I don't think there's a corporation on earth that doesn't have a similar policy," Ford said. "We all know this. The SEC knows this. They were in possession of stolen records, but the SEC apparently asked these individuals to turn them over voluntarily."

He said that if a former SEC employee had reached out to his law firm and disclosed that he had thousands of SEC emails involving Gentile and turned them over on a voluntary basis, the SEC would take issue with it.

"I imagine if I were to do that, not only would there be an objection, but the SEC and this court would come after my law license," Ford said.

Alice Sum, who argued on behalf of the SEC, said the agency regularly receives information and documents from corporate insiders, including current and former employees, about potential misconduct and violations of securities laws.

"This is not a situation where these folks have stolen records," Sum said. "We receive information all the time. This is par for the course; it is not something that's unique. It's part and parcel to the function of the agency."

She added that the agency has not reviewed or used the documents, some of which have not yet even been transmitted to the SEC. In addition, she said that Gentile lacks standing to make these

discovery objections. The only ones who can do that are the joint liquidators in the Bahamas who are in charge of SureTrader, according to Sum.

Gentile had **previously tried** to get the complaint against him dismissed for lack of jurisdiction, arguing that the Southern District of Florida is the wrong venue for the allegations because he says he had nothing to do with SureTrader during the roughly six-month stretch that he lived in Miami between March and September 2016. He lived outside of Florida during the rest of the time period in question, according to his motion.

Gentile said he resigned as president and director of SureTrader in December 2015 and had no involvement in the business until after an indictment was dismissed against him in New Jersey in January 2017.

But in January, U.S. District Judge Beth Bloom declined to dismiss the suit on this basis.

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.

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

Gentile is represented by Dayliset Rielo of The Rielo Law Firm LLC and Adam C. Ford, Matthew A. Ford and Stephen R. Halpin III of Ford O'Brien Landy LLP.

The case is U.S. 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.

--Additional reporting by Bill Wichert. Editing by Patrick Reagan.