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Broker Loses Bid To Toss SEC Suit Citing Bahamian Law

By **Ivan Moreno**

Law360 (September 2, 2022, 7:54 PM EDT) -- A Florida federal judge Friday denied a Bahamian broker-dealer's bid to dismiss his company from a civil case alleging he skirted U.S. day trading regulations, saying he has no standing to make the request because the business already defaulted in court.

U.S. District Judge Beth Bloom was responding to a filing from Guy Gentile earlier Friday that argued that the U.S. Securities and Exchange Commission's failure to follow his country's laws meant the courts there wouldn't recognize any judgment against the company at the center of the SEC's suit, SureTrader.

"Gentile does not argue that the Court lacks subject matter jurisdiction with respect to the claims asserted against him; rather, he raises argument only with respect to the claims against a defaulted co-defendant," she said.

Judge Bloom said SureTrader failed to respond to the complaint the SEC filed against it in October 2021, so the court entered a default against the company the following month.

"Gentile has provided no legal authority, nor has the Court found any, to support his standing to make arguments for dismissal on behalf of a co-defendant," Judge Bloom said.

Gentile is facing allegations he violated securities law while operating SureTrader between March 2016 and November 2019 by not registering the company with the SEC while soliciting U.S.-based customers, according to the government. The SEC said in its **complaint** that SureTrader advertised itself to investors as a way "to avoid the nasty [Pattern Day Trading] Rule."

"While SureTrader worked to help U.S. customers circumvent the rules, SureTrader itself was failing to comply with the mandatory broker-dealer registration requirements of the U.S. securities laws – namely, the federal securities laws that prohibit unregistered foreign broker-dealers from soliciting U.S. customers," the SEC complaint said.

Gentile had argued in his motion that SureTrader is currently being liquidated under the supervision of joint official liquidators appointed by the Supreme Court of the Bahamas and that the U.S. government did not seek leave from the high court before initiating its action. As a result, he argued, a judgment against SureTrader would not be recognized or enforced by Bahamian courts.

"Under Bahamian law, those liquidation proceedings effected an automatic stay, requiring the SEC to obtain leave of court from the Supreme Court of the Bahamas before commencing an action against SureTrader," he said.

Liquidation proceedings for SureTrader began in March 2020, and the SEC filed its complaint against in March 2021, Gentile said.

Even if the SEC obtains a favorable judgment in Florida, Gentile argued, it would be unable to collect funds from SureTrader because the agency failed to preserve its status as a potential creditor by not submitting proof of debt in the company's liquidation proceedings.

"The SEC was afforded but declined to pursue its opportunity to assert its alleged rights against SureTrader in the Bahamian liquidation," Gentile said.

He said even the SEC's request to permanently enjoin SureTrader from violating securities laws is doomed and "would have zero effect."

"Because SureTrader has been non-operational since late 2019, has been undergoing a court-ordered liquidation since early 2020, and will soon be dissolved, the SEC's request for injunctive relief is plainly moot," Gentile said.

All of that doesn't matter because the SEC case has proceeded against Gentile since SureTrader's default.

Counsel for Gentile and the SEC did not immediately respond to a request for comment Friday.

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 said he had nothing to do with SureTrader during the roughly six-month stretch that he lived in Miami between March and September 2016.

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 Carolina Bolado and Melissa Angell. Editing by Gemma Horowitz.

Update: This story has been updated with information about Judge Bloom's Friday order.