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## Crypto CEO Wants SEC Pump-And-Dump Suit Trimmed Again

By **Katryna Perera**

Law360 (November 22, 2022, 3:10 PM EST) -- The CEO of bitcoin mining firm MGT Capital Investments has asked a New York federal judge to toss four claims against him in a U.S. Securities and Exchange Commission suit over his alleged involvement in a \$27 million pump-and-dump scheme.

Robert Ladd's request on Monday comes after a federal judge previously **trimmed two claims** from the suit in January 2021. There are eight remaining claims against Ladd, but his Monday **motion** for summary judgment only asks the judge to toss the SEC's fraud and aiding and abetting fraud allegations, because they are "unsupported by sufficient evidence."

Ladd argues the SEC has failed to present any evidence supporting these four claims after four years of discovery, which produced "hundreds of thousands of pages of documents" and a dozen depositions.

Ladd says the allegations of his personal fraud were disproved in discovery, and in regard to the aiding and abetting allegations, Ladd says that "with no depositions taken of any witness to those actions, no witness who can admit to or provide admissible evidence regarding conduct, and no other evidence, aiding and abetting liability cannot attach here."

In its suit, the SEC claimed Ladd got involved with the alleged scheme in 2012, when alleged ringleader Barry Honig, who owns GRQ Consultants Inc., Honig's associate John Stetson, the owner of Stetson Capital Investments Inc., and an unnamed third party bought convertible preferred stock in Ladd's company in a deal requiring Ladd to spend \$300,000 to promote MGT Capital Investments stock. The Honig investor group then allegedly paid John H. Ford, a stock promoter, to write articles promoting MGT.

The SEC also claimed that in 2015, Honig and Ladd negotiated another investment deal structured to let the investors convert and sell their MGT shares without reporting it to the SEC. In 2016, the SEC claimed that after Honig's associates had garnered a secret controlling interest in MGT, Ladd followed Honig's instructions to pay \$125,000 to get a stock promoter to write an article talking up MGT. After the article ran — without disclosing the author's interest in the company — MGT stock allegedly rose 7,000%, and the Honig investors sold off their shares.

In March 2016, the SEC alleged the Honig group introduced Ladd to John McAfee, the cybersecurity pioneer. The Honig group encouraged Ladd and McAfee to plan a merger of MGT and D-Vasive Inc., McAfee's then-current venture. When the merger was announced — pushing up trading prices for MGT shares — the Honig investors sold off 9.2 million MGT shares.

In addition to Ladd, Honig and Stetson, the suit also named individual defendants Elliot Maza and Brian Keller and two entity defendants: Honig's company GRQ and HS Contrarian Investments LLC.

According to Monday's motion, all 19 defendants, except for Ladd, have settled with the SEC without admitting or denying any wrongdoing. Therefore, with no evidence of any underlying wrongdoing by the other defendants, the SEC can't prove aiding and abetting violations by Ladd, and the claims must be tossed, the motion states.

On the fraud claims against Ladd, the motion states the CEO "has maintained since day one, he acted

at all times in good faith, with the guidance and advice of counsel to ensure all of MGT's filings were properly made as required by the law."

This good-faith assertion was tested when Ladd was ordered by the court to either waive his attorney-client privilege or abandon that defense, and Ladd chose to waive the privilege, according to the motion.

His waiver resulted in the depositions of six lawyers who represented MGT, Ladd, Honig and all members of the Honig group, as well as the production of emails and other documents by Ladd and MGT related to the company's filings.

The motion states that "no stone was left unturned," and each lawyer testified that they did not believe the Honig group was acting as a statutory group to execute the alleged pump-and-dump schemes or that MGT had any obligation to disclose the Honig group's collective ownership and controls over its filings.

The SEC also alleges that Ladd made material misrepresentations about the McAfee merger in a May 2016 press release. But Ladd says the "imprecise draftsmanship" in the press release about McAfee's original company was already known and repeatedly made in the press, "making the misstatement immaterial by law, and precluding any finding of scienter, or even negligence, by Ladd."

The SEC further claims, with respect to its fraud allegations, that there were inaccuracies in a Form 4 and Form 144 filing Ladd made in May 2016.

But Ladd argues that, "standing alone ... there is no evidence in the record that these inaccuracies constitute a material misstatement, or, for purposes of the [fraud] allegation, that [he] made them with the requisites scienter."

In January 2021, U.S. District Judge Edgardo Ramos granted Ladd's requests to dismiss an SEC claim concerning his alleged failure to disclose some stock sales on a form. Judge Ramos also dismissed a claim concerning financial reporting Ladd did while acting as a broker for his father.

Representatives for the parties did not immediately respond to requests for comment.

Ladd is represented by Adam C. Ford and Anjula S. Prasad of Ford O'Brien Landy LLP.

The SEC is represented in-house by Nancy A. Brown, Jack Kaufman, Jon Daniels, Katherine Starr Bromberg and Sanjay Wadhwa.

The case is Securities and Exchange Commission v. Honig et al., case number 1:18-cv-08175, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Emilie Ruscoe. Editing by John C. Davenport.