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Bahamas broker chief demands \$20m SEC sanctions cut to \$12k



Guy Gentile

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By NEIL HARTNELL

Tribune Business Editor

nhartnell@tribunemedia.net

A Bahamian broker/dealer's principal yesterday argued a minuscule fraction of the \$20m-plus financial sanctions demanded by US regulators should be imposed against him for violating securities laws.

Guy Gentile, head of Mintbroker International, which was placed into full liquidation by the Bahamian Supreme Court in December 2021, asserted in legal filings that the southern Florida federal court should "limit" the penalties sought against him by the Securities & Exchange Commission (SEC) to just \$11,524.

Arguing that the capital markets regulator failed to supply evidence showing US clients of his broker/dealer, which was based in Bay Street's Elizabeth on Bay plaza, had suffered \$29.69m in trading losses, he argued that its calculations that he earned \$13.13m in net income over the four-and-a-half years to the 2019 third quarter were fundamentally flawed.

That latter sum forms the bulk of the financial sanctions that the SEC is urging the south Florida court to impose against Mr Gentile after a jury last year found him and Mintbroker International liable for violating US securities laws by actively soliciting American clients despite not being registered with their regulator.

However, Mr Gentile is arguing that the SEC's sanctions calculations ignore \$30m in "legitimate expenses" that his Bahamian broker/dealer incurred between March 2016 and December 19. And, given that so-called "disgorgement" is limited to "net profits from wrongdoing" once legitimate expenses are deducted, he is asserting that the \$30m largely wipes out or "absorbs" and negates the financial penalties sought by the SEC.

To back up his \$30m expenses claim, Mr Gentile produced a 14-page list of vendor payments made by Mintbroker International, which was previously also called SureTrader and Swiss America Securities. These payments included \$75,000 to the Davis & Company law firm for legal services, plus six-figure sums to the likes of Bahamas Power & Light (BPL), Cable Bahamas and Bahama Health.

And Mr Gentile, in his latest legal filings, again sought to portray himself as a victim of a 13-year persecution or witch-hunt by the SEC that has spanned several US courts despite allowing the regulator, the US Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) to use Mintbroker International and its predecessors as a "honeypot" to ensnare securities law violators.

And he also blamed the US regulator's pressure for "forcing" the broker/dealer into liquidation in The Bahamas, which meant Mintbroker was "blocked" from defending itself and was hit by a default judgment because it no longer existed as a corporate entity.

"The SEC has fabricated 'disgorgement' and 'penalty' amounts so they are equal to those it sought in the original dismissed District of New Jersey cases based on alleged conduct from 2007–2008," Mr Gentile and his US attorneys argued. "The relief sought against Gentile is punitive, intended to punish him for alleged conduct from 17 years ago.

"But Congress has not authorised the SEC to seek, or the court to order, such punitive relief. As explained below, the court should deny the SEC's requested punishment and limit the SEC's relief to a tier one penalty against Gentile: \$11,524.

"To begin with, the SEC's request for almost \$20m in disgorgement, penalties and interest exceeds the SEC's equitable powers. It is legally deficient. As explained below, it is also factually deficient. The SEC fails to even meet the threshold of showing that any losses were attributable to the supposed violation here, let alone the \$29.69m in losses that the SEC claims investors incurred 'trading with SureTrader'," they argued.

"There is no connection between SureTrader's lack of SEC registration and investors' decisions to pay commission and enter into certain trades using self-directed accounts. And, in fact, SureTrader charged significantly lower commissions than US registered broker/dealers."

Turning to the alleged net income that he allegedly received from the trading commissions paid by US investors, Mr Gentile argued: “The SEC’s proposed award includes over \$13m, reflecting the percentage of SureTrader’s commission purportedly derived from US residents and customers. But the SEC has no evidence that Gentile ever received any of this commission revenue.

“It even concedes that ‘[b]y 2018, SureTrader had nearly 75 employees’ The SEC disregards the [US] Supreme Court’s holding that disgorgement is limited to ‘net profits from wrongdoing after deducting legitimate expenses’ .. by failing to deduct any of SureTrader’s expenses despite recognising that SureTrader had nearly 75 employees by 2018.

“Indeed, deduction of SureTrader’s \$30m in legitimate expenses between March 2016 and December 2019 - including payroll, taxes paid to the IRS and registration fees for the Securities Commission of the Bahamas - should absorb the entire sought ‘disgorgement’.”

Expanding on the latter point, Mr Gentile and his US attorneys argued that the SEC had totally ignored Mintbroker International’s legitimate Bahamian expenses in its financial sanctions demands. “This included fees for registering with the Securities Commission of the Bahamas and for compliance with government fee, tax and penalty requirements,” they reiterated.

“SureTrader’s expenses also included salary paid to the ‘nearly 75 employees’ that the SEC concedes SureTrader had, in addition to rental fees for SureTrader’s 8,000 square foot office space, software fees, trading fees, and other legitimate business expenses.

“Thus, any potential award of disgorgement against SureTrader or Gentile should be subject to a deduction of approximately \$30m in business expenses. And Gentile personally paid approximately \$5.7m in taxes in 2017-2018, which is not only a legitimate expense but also demonstrates his personal commitment to complying with the law and repatriating money to the US,” the Mintbroker chief added.

“The violation is a failure to register with the SEC, which is irrelevant to the maintenance of office space, paying taxes, compensating employees and other legitimate expenditures. Further, as the SEC concedes, a significant portion of SureTrader’s business during the relevant period did not even involve servicing accounts for US clients.

“Regardless, SureTrader was registered in the Bahamas and registered with the IRS, and the SEC knew all of this in 2011.....Yet the SEC seeks to penalise Gentile for the amount that SureTrader purportedly failed to pay by not registering with the SEC, although SureTrader paid all registration and related fees in The Bahamas as well as US IRS-related fees and taxes.”

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