United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1181 **September Term, 2001**

Michael J. Markowski,
Petitioner

v.

Securities and Exchange Commission,
Respondent

Filed On: April 25, 2002 [673703]

Petition for Review of an Order of the Securities and Exchange Commission

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Before: GINSBURG, *Chief Judge*, HENDERSON and ROGERS, *Circuit Judges*.

JUDGMENT

This petition for review was considered on the record from the Securities and Exchange Commission and on the briefs filed by the parties. It is

ORDERED AND ADJUDGED that the petition for review be denied for the reasons given in the attached memorandum.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk

No. 01-1181, *Markowski v. SEC*

MEMORANDUM

The SEC commenced this enforcement action in March 1997, six years after Markowski's misconduct ended but only one year after a district court had enjoined Markowski from violating the securities laws. The misconduct and the injunction each sufficed to permit the Commission to bar Markowski from associating with any broker or dealer. *See* 15 U.S.C. § 78o(b)(6)(A)(i), (A)(iii). The Commission's action is time-barred, however, if it was commenced more than five years after "the claim first accrued." 28 U.S.C. § 2462. Markowski contends that the claim accrued when his misconduct occurred, because the Commission could have brought its action then. The Commission argues that the five-year clock started running anew in 1996, when the injunction was issued and a different statutory prerequisite was thereby satisfied.

This court effectively rejected Markowski's argument in *Proffitt v. FDIC*, 200 F.3d 855, 862-65 (D.C. Cir. 2000). The court held the FDIC could bring an action to bar Proffitt from the banking industry because, although sufficient statutory prerequisites were in place for the action more than five years before the FDIC commenced it, a different and independently sufficient prerequisite was satisfied within five years of the date the action was commenced. *Id.* at 864-65 ("While the FDIC might well have brought an action earlier under the 'will probably suffer' language, its failure to do so does not render untimely, and therefore, unauthorized, its action based on the later occurring effect"). Although the precise statutory provisions at issue in *Proffitt* and in this case differ, Markowski cannot prevail because he fails to offer any relevant distinction between his argument and the argument rejected in *Proffitt*.