

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-1334

September Term, 2003

Filed On: April 23, 2004 [818006]

Robert M. Fuller,

Petitioner,

v.

Securities and Exchange Commission,

Respondent.

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

Before: HENDERSON, ROGERS and GARLAND, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record from the Securities and Exchange Commission and on the briefs by counsel. For the reasons set out below, it is

ORDERED that the petition for review be denied. Substantial evidence supports the Commission's findings that Fuller was aware of illegal trading by the CEO and President of Vista 2000, Inc. (Vista) and the lack of independence of one of its auditors. *See Wonsover v. SEC*, 205 F.3d 408, 412 (D.C. Cir. 2000). Even if the Commission misapplied the "mailbox rule" in concluding that Fuller was notified of the illegal trading, *see Lepre v. Dep't of Labor*, 275 F.3d 59, 69-71 (D.C. Cir. 2001) – a doubtful proposition in light of the numerous mailings and evidence presented by the Commission, *see Williams v. First Gov't Mortgage & Investors Corp.*, 225 F.3d 738, 751 (D.C. Cir. 2000); *Cook v. Providence Hosp.*, 820 F.2d 176, 179 & n.3 (6th Cir. 1987) – the Commission's finding that Fuller was also alerted to the trading by virtue of a phone call from one of Vista's brokers is readily supported by the record and the administrative law judge's credibility determinations. Fuller's attempt to shift responsibility to Vista's CFO for purposes of evaluating the independence of the company's accountants is equally unpersuasive.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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 rehearing en banc. *See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.*

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk