

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1505

September Term 2007

SEC-3-12228

Filed On: July 8, 2008

James E. Franklin,

Petitioner

v.

Securities and Exchange Commission,

Respondent

**PETITION FOR REVIEW OF AN ORDER OF
THE SECURITIES AND EXCHANGE COMMISSION**

BEFORE: Garland, Brown, and Griffith, Circuit Judges

J U D G M E N T

This petition for review of an order of the Securities and Exchange Commission was considered on the briefs and the appendix filed by respondent. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the petition for review be denied. Petitioner may not collaterally attack the district court injunction underlying this enforcement action. See Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1108 (D.C. Cir. 1988). Moreover, his claims of Enforcement Division misconduct are either barred for failure to raise them before the Commission, see 15 U.S.C. § 78y(c)(1); Stoiber v. SEC, 161 F.3d 745, 754 (D.C. Cir. 1998), barred for failure to raise them in his opening brief, see Kimberlin v. United States Department of Justice, 318 F.3d 228, 232 n.4 (D.C. Cir. 2003), or insufficient to establish “unclean hands” under the standard set out in his brief, see Petitioner’s Brief at 16 (citing SEC v. Follick, 2002 WL 31833868 (S.D.N.Y. Dec. 18, 2002), for the proposition that agency misconduct must “be egregious and the resulting prejudice to the defendant [must] rise to a constitutional level” to support a defense of unclean hands against a government agency). Finally, his claim that the sanction at issue does not serve the public interest is barred for failure to raise it in his opening brief.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1505

September Term 2007

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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