

Split SEC Dismisses Case Against Ex-Wells Fargo Trader

By **Jon Hill**

Law360, New York (July 14, 2017, 8:55 PM EDT) -- The U.S. Securities and Exchange Commission dismissed administrative proceedings on Thursday against a former Wells Fargo trader after commissioners deadlocked over whether there was enough evidence to establish that he traded while aware of material, non-public information.

The dismissal of the proceedings against Joseph C. Ruggieri comes nearly two years after an in-house court tossed the case in a **September 2015** initial decision, which found that the SEC's Division of Enforcement had established in four out of six alleged instances that Ruggieri had traded based on tips from former Wells Fargo analyst Gregory Bolan, but had not shown that Bolan received a personal benefit for providing those tips in accordance with the Second Circuit's **Newman decision**.

The division had a hearing arguments disagreed about the evidence marshalled not participate in t

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Silvia L. Serpe, Partner
Serpe Ryan LLP

but after Piwowar other Clayton did

“Having looked at uncanny timing of Ruggieri’s communications, and his explanations for the trades, I believe that the division has met its burden of proving by a preponderance of the evidence that Ruggieri traded while aware of material nonpublic information,” Stein said in her one-paragraph opinion.

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But while Piwowar acknowledged that some of the phone records and trading history produced by the division was suggestive, he argued that it wasn't necessarily conclusive. One might infer that Bolan tipped Ruggieri based on evidence showing phone calls between the two occurring before the disputed trades, Piwowar said, but that inference is undermined by contrary evidence, including the fact that the two men spoke almost every day during the time they were both employed at Wells Fargo because such communication was encouraged.

“Indeed, there is no proof that Bolan and Ruggieri actually spoke during the calls reflected in the telephone records because other Wells Fargo traders typically answered Ruggieri’s phone when he was not at his desk,” Piwowar said.

Statistical evidence mustered by the division was likewise inconclusive because of methodological flaws in its analysis, Piwowar argued. And the division’s other circumstantial evidence fared no better, in Piwowar’s view — whereas the division had argued that a tip could be inferred because Ruggieri’s bonus was tied to the amount of

profits he created for Wells Fargo, for example, Piwowar contended that an incentive to make profits didn't actually prove a tip had occurred.

"In sum, while certain evidence is consistent with the division's allegations against Ruggieri, there is also countervailing evidence," Piwowar said, concluding that the division had not shown "by a preponderance of the evidence that Bolan provided nonpublic information to Ruggieri in connection with these four trades."

Silvia L. Serpe, an attorney for Ruggieri, expressed satisfaction with Thursday's outcome in an email to Law360.

"Based on a de novo review, the commission concluded that Mr. Ruggieri did not trade on any tips," Serpe said. "This is a complete vindication that goes well beyond the ALJ's finding of no insider trading based on no personal benefit under Newman."

Bolan previously settled the SEC's claims against him in the proceedings, agreeing in **May 2015** to pay the agency \$75,000 without admitting or denying its allegations

The SEC declined to comment.