

INSIGHTS

SEC Charges Additional Municipal Official With Securities Fraud In Connection With Oyster Bay Loan Guarantee Scheme

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By: [**Britt Cass Steckman**](#)

On March 1, 2018, the U.S. Securities and Exchange Commission (“SEC”) filed a complaint in U.S. District Court for the Eastern District of New York (“Court”) charging Leonard Genova, town attorney and deputy supervisor for the Town of Oyster Bay, New York (the “Town”), with engaging in fraudulent omissions and misrepresentations relating to indirect guarantees of \$20 million in private loans that the Town made for the benefit of a local business owner (the “Concessionaire”). The SEC [**previously charged**](#) the Town and its former Chief Executive Officer John Venditto with defrauding investors through the same scheme.

The complaint alleges that Genova participated with Venditto and the Town in concealing the nature of the indirect guarantees from investors, violating Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. The complaint also alleges that Genova is liable under Section 20(a) of the Exchange Act as a controlling person for the Town’s violations of Section 10(b) and Rule 10b-5 of the Exchange Act, and that he aided and abetted the Town’s violations of the Securities Act Section 17(a) and Exchange Act Section 10b and Rule 10b-5 and Venditto’s violations of the Securities Act Section 17(a)(1) and 17(a)(3) and Exchange Act Section 10b and Rule 10b-5. It is worth noting the claims against Genova include the *scienter* based “scheme fraud” charge under Section 17(a)(1) and the negligence based “transaction fraud” charge of Section 17(a)(3) but omit the negligence based “misstatement or omission” charge of Section 17(a)(2) and do not parse the claimed violations of Section 10(b) and Rule 10b-5.

The complaint seeks a “conduct-based” permanent injunction prohibiting Genova “from committing and or aiding and abetting the violations of the federal securities laws alleged” and “from participating in any offering of municipal securities, including engaging in activities with a broker, dealer or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any municipal securities,” as well as civil penalties under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

On the day that the complaint was filed, the SEC announced in a [press release](#) that it had agreed to settle the suit with Genova, with Genova agreeing to a permanent injunction against participation in the offering of municipal securities. This settlement agreement is subject to review and approval by the Court; the Court will also determine whether to impose civil penalties on Genova. The SEC's press release indicates that it is continuing to cooperate with the Department of Justice and the Federal Bureau of Investigation to conduct joint investigations into fraudulent activity relating to securities. In addition, this case is another example of the SEC's increasing use of control person liability to hold municipal officials liable for violations of a municipality under Section 20(a) of the Exchange Act.

A copy of the complaint is available [here](#).