

Debate

Securities and Exchange Commission and Insider Trading Allegations

ISSUE: Does the SEC Target Highly Visible Celebrities for Publicity?

The Securities and Exchange Commission (SEC) has been aggressively pursuing those accused of insider trading and other financial violations since the advent of the financial crisis. Some claim that the SEC is targeting people of high status and fame to receive publicity for their enforcement and make an example of offenders. The SEC claims that they are simply trying to bring offenders to justice.

In 2008, the SEC filed insider trading charges against high-profile billionaire and outspoken entrepreneur Mark Cuban. The claim alleged that as a stockholder in Canadian online company Mamma.com, Mr. Cuban received a phone call from CEO Guy Fauré stating that the company was going to issue new shares in a private offering, which would dilute the value of current stockholder shares. Mr. Fauré claims this information was not yet publicly disclosed at the time of the phone conversation and that Mr. Cuban made a statement indicating he knew he could not sell his shares because of this. However, the allegations continue, Mr. Cuban sold his six percent stake in the company worth \$7 million, avoiding more than \$750,000 in losses.

Mr. Cuban denied these allegations, refusing to succumb to a \$2 million settlement with the SEC. Rather, he proceeded to spend \$12 million to hire a legal team and argue his innocence. The SEC set out to prove, at trial in 2013, that Mr. Cuban had “received confidential, significant, nonpublic information” before selling his shares, which is the definition of insider trading. However, an expert witness testified and provided evidence against these allegations. He cited sources, including the SEC’s own records, which indicated a change in trading volume for Mamma.com stock proving that the information was public knowledge. He also provided analysis showing that the market reaction to the Mamma.com announcement was not statistically significant and therefore not material. The evidence was compelling, and the jury concluded, after five hours of deliberation, that Mr. Cuban was innocent.

Mr. Cuban blamed the SEC for wasting years of his time and a lot of money for charges that had no evidence backing them. He claims that they intentionally lied and bullied him because of his celebrity status, hoping to gain publicity. Alex Bourelly, a former SEC attorney, reinforced the claim by stating that the SEC does pursue high-profile cases for publicity. Additionally, the amount of money purportedly traded was small in comparison to the cases that the SEC usually prosecutes. On the other hand, the SEC’s inspector general claims that Mr. Cuban’s celebrity status was not a factor in pursuing the charges because some lawyers involved in the case did not know who he was. There are also those who claim that Mr. Cuban was declared innocent due to his likeability in Dallas, where the trial was held, since he is the owner of the Dallas Mavericks.

This is not the only time the SEC has been accused of unevenly targeting celebrities. Many people believe that Martha Stewart was targeted because of her celebrity status, and the SEC wanted to make an example of someone to get publicity. Despite the fact that Martha Stewart was found guilty, the amount of money traded was even smaller than in Mr. Cuban’s case, resulting in a total of \$45,673. As the Martha Stewart scandal was unfolding, other incidents involving much larger amounts of money were revealed, such as the misconduct of executives

Mark Swartz and Dennis Kozlowski—who were convicted of cheating Tyco out of \$600 million—as well as Worldcom and Enron.

Instances of insider trading have not died down since the Martha Stewart scandal. However, Stewart’s conviction did demonstrate that high-profile individuals would not be immune from the penalties of misconduct. Even successful CEOs of Fortune 500 companies are being forced to account for questionable behavior, as evidenced by Mark Hurd’s resignation from Hewlett-Packard after an internal probe indicated sexual harassment. Lawmakers are taking a strict stance against corporate malfeasance, and corporations are in turn beginning to hold management to higher ethical standards.

There are two sides to every issue:

- 1. Mark Cuban was engaged in activities that merited the SEC to allege insider trading.*
 - 2. Mark Cuban was targeted for insider trading because of his celebrity status and confrontational personality.*
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