

# Chicago Daily Law Bulletin®

Volume 157, No. 248

Tuesday, December 20, 2011

## Attorneys discuss the complexities of SEC complaint involving Rudy

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The Securities and Exchange Commission settled a complaint Friday with Daniel “Rudy” Ruettiger — the Notre Dame football player made famous by the movie bearing his nickname — over accusations that he and his sports beverage company took part in a “pump-and-dump-scheme.”

The SEC’s complaint says Ruettiger and 12 other business partners made false promotional claims about Rudy Nutrition Inc. in an effort to pump up the publicly traded company’s stock price before selling their holdings and cashing in on their false claims.

Ruettiger and 10 others listed in the complaint agreed to settle the SEC’s charges without admitting to or denying the allegations, an SEC media release says.

Local lawyers who deal with corporate fraud, but were not involved with this case, said the extent of Ruettiger’s knowledge of or involvement in the scheme cannot be easily gleaned. But they said the SEC’s settlement allowing him to accept no guilt does not mean the government believes Ruettiger got “taken for a ride.”

Attorney Neal H. Levin, head of the fraud group at Freeborn & Peters LLP, said Ruettiger showed signs of “the fraudster’s wife” in the SEC’s allegations.

“The fraudster’s wife may either know what’s going on, should have known what’s going on or maybe even signed off on what was going on,” said Levin.

“What smells whenever you listen to (a fraudster’s wife) is a concept that is becoming extremely popular in Ponzi schemes, which is this concept of willful blindness,” Levin said.

Levin described willful blindness as not necessarily caring to learn if the company or business a person works with might be involved in fraudulent behavior.

The SEC’s complaint says Ruettiger, the CEO of Rudy Nutrition, either “knew or was reckless in not knowing” that his sports drink company engaged in a “classic pump-and-dump scheme.”

Such a scheme entails hyping a stock on false information so the price rises, followed by insiders or others who hyped the stock cashing in by dumping their shares, causing the stock price’s collapse.

The SEC frequently makes settlements where financial fraud defendants do not accept or deny blame, several local lawyers said.

Ruettiger did agree to a penny stock and officer-and-director ban in the settlement as well as to pay \$382,866 in fines, the SEC release says.

The complaint says Ruettiger “gave sufficient control” to a business partner named Stephen DeCesare “to facilitate the scheme,” which allegedly netted its participants \$11 million in illicit profits.

William E. Turner II, a partner at Barack, Ferrazzano, Kirschbaum & Nagelberg LLP who focuses on securities offerings and public company records reporting, said the backdoor tactic Ruettiger’s company took to get its shares publicly traded — called a reverse merger — can be used to facilitate fraud.

“What the current SEC is doing is sort of turning off the spigot on reverse mergers because of the fraud concerns and this Rudy company is really one example,” he said, adding that legitimate companies can still use reverse mergers effectively.

Levin from Freeborn & Peters said

using a reverse merger could be viewed as a “red flag” for Ruettiger to realize the company’s actions might be fraudulent.

“Red flag after red flag, Rudy should have seen these were not good ideas,” Levin said.

He said his team often uses psychology research in prosecuting criminal fraud for banks, insurance companies and trustees looking to reclaim money for fraud victims.

“But I suspect he wasn’t really looking at that,” he said. “He was looking at his sports drink and wanted to give life to it.

“I think Rudy was in it because he wants to keep his name associated with something great. He gave it the all-American shot. He was willing to do whatever it takes and be willfully indifferent to make his product a brand name.”

Turner said Ruettiger’s settlement of not accepting or denying blame coupled with the complaint’s language made it seem like the SEC wanted to tie him to knowing the scheme occurred.

“My (reaction) to the complaint was that (the SEC) was very careful in wording it because they wanted to make clear that they were accusing him of participation in the scheme notwithstanding any arguments that he might make that he didn’t know of the actual pumping and dumping,” Turner said.

Eric C. Marshall, a corporate transactions partner at Schuyler, Roche & Crisham P.C., said he could not guess how much Ruettiger knew about the scheme.

“From reading the complaint it is clear this wasn’t just over-enthusiastic executives who got wrapped up in their company,” Marshall said. “According to the complaint, this was a fairly complicated and intentional effort.”