



Marking a rare loss for the Securities and Exchange Commission (SEC) in its favored administrative forum, SEC Administrative Law Judge (ALJ) James E.

Grimes ruled against the agency on April 18, 2017, in [\*In the Matter of Charles L. Hill, Jr.\*](#) Ironically, the SEC fought hard to keep the case in the administrative forum, after [Respondent Hill filed an action in federal district court](#) claiming the SEC's "home court" forum was unconstitutional. The district court enjoined the SEC, but the 11th Circuit vacated the district court's order, and the case proceeded on the SEC's administrative court. There, the ALJ found the SEC's circumstantial evidence not only to be insufficient, but fatally undermined by the credibility of witnesses who offered testimony favorable to Hill. ***Allegations of Insider Trading*** The SEC alleged that Hill violated [Section 14\(e\)](#) of the Exchange Act and Exchange Act [Rule 14e-3](#) when he traded Radiant Systems, Inc. (Radiant) stock based on confidential, nonpublic information, netting a profit of over \$2.6

million. During a period when Radiant was in acquisition talks, Hill, a commercial real estate developer with no connection to Radiant, purchased Radiant stock for himself and his daughters. The SEC alleged that Hill learned of the possible acquisition from his close friend Todd Murphy, who in turn had heard about it from Radiant's COO, Andrew Heyman. As evidence to support its allegations that Hill bought Radiant stock with inside information, the SEC relied on the friendship and contacts between Heyman and Murphy, and Murphy and Hill, as well as Hill's suspiciously-timed trades. ***Witness Credibility is Key*** ALJ Grimes' written decision indicates that he relied heavily on his perceptions of witness credibility in the case.

- ALJ Grimes found credibility in Heyman's demeanor, in conjunction with Heyman's "precise answers to questions"—even when Heyman's answers conveyed little substance. For example, Heyman conceded that he *likely* attended meetings or dinners with Murphy, despite testifying that he could not remember such events.
- In a curious passage, ALJ Grimes described Murphy's "slightly ruffled appearance," and noted that Murphy "radiated peace and calm." Murphy testified that he did not have any knowledge from Heyman about the possible acquisition and did not speak with Hill about any possible acquisition. ALJ Grimes found Murphy's testimony to be honest given his simple and confident responses to questions, in addition to his "calm and collected demeanor." ALJ Grimes also noted the SEC's failure to call Murphy as a witness, even though the SEC alleged that it was Murphy who tipped Hill.
- Carter, Hill's broker, provided damaging testimony about Hill. However, ALJ Grimes found Carter to lack credibility because she "repeatedly contradicted herself" during cross-examination. ALJ Grimes found Carter to be "the least believable witness who testified during this proceeding."

***Significant Circumstantial Evidence Not Enough*** Heyman's and Murphy's close friendship, in conjunction with their communications throughout the time of the acquisition, did not convince ALJ Grimes that Heyman tipped Murphy who in turn tipped Hill. ALJ Grimes noted that "suspiciously timed trades, without more, is not sufficient to carry the Division's burden." ALJ Grimes did emphasize that Hill's trades, including the timing and amounts, "strongly suggests that Hill knew something about Radiant." Even Hill admitted during his testimony that his trades would be suspicious enough for the SEC to take notice and open an investigation. However, from ALJ Grimes' perspective, the trades themselves were not adequate to explain what Hill knew or who he talked to when he made the trades. ***Lessons Learned?*** While the administrative forum has been very good to the SEC, it has suffered some setbacks, and *Hill* is particularly damaging given the SEC's previous success in insider trading cases. Whether the SEC's loss will impact its choice of forum decisions in the future is unknown. The SEC can appeal the *Hill* case to the Commission, and is likely to do so. We will be watching developments closely.

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