
United States v. Leonard: “Totality of Circumstances” Determines what Constitutes a “Security”

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On December 20, 2005, Paul Dickau and Nanci Silverstein, among others, were sentenced in the United States District Court for the Eastern District of New York to forty-three months and six months imprisonment, and ordered to pay \$499,989.64 and \$14,490 in restitution, respectively, after having been found guilty by a jury of securities fraud and conspiracy to commit securities and mail fraud. Both were involved in selling interests of at least \$10,000 to investors in two limited liability companies formed to finance the production and distribution of motion pictures.¹ The materials the defendants used to promote the investments, however, grossly understated the commissions they were to receive. While the materials given to prospective investors suggested that 69% of moneys went to film production and pre-production, and 20% went to sales commissions and sales office overhead and bonuses, the defendants actually received sales commissions of between 42% and 45% on each investment sold.² It was this discrepancy that led to their prosecution.