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.