
Second Circuit Finds Alleged Reckless Failure to Disclose Loan Used to Pay Rent to Lender Was Sufficient to Give Rise to Strong Inference of Scienter

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On August 3, 2020, the United States Court of Appeals for the Second Circuit reversed the dismissal of a securities fraud claim brought pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). *Setzer v. Omega Healthcare Inv’rs, Inc.*, 2020 WL 4431902, at *1 (2d Cir. Aug. 3, 2020) (hereinafter, *Setzer v. Omega*). The Second Circuit analyzed both the factors giving rise to a duty of disclosure and how to assess scienter in the context of an allegedly reckless (as opposed to intentional) non-disclosure and held that allegations about the allegedly reckless failure to disclose a loan used to pay rent to the lender were sufficient to give rise to a strong inference of scienter.

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