

Judge Threatens SEC With Sanctions In Crypto Case

By **Aislinn Keely**

Law360 (December 1, 2023, 4:25 PM EST) -- A Utah federal judge has ordered the U.S. Securities and Exchange Commission to explain why it shouldn't face sanctions after he found that the agency may have misrepresented key facts to obtain a temporary restraining order against cryptocurrency project Debt Box.

U.S. District Judge Robert J. Shelby reversed the temporary restraining order and ended the receivership, which he said was "improvidently issued" based on SEC arguments that the Debt Box entities posed a potential to cause irreparable harm. Judge Shelby said in an **order** Thursday that it appears the regulators misled the court and failed to provide adequate context. He requested that the attorneys provide the evidence they relied on when making the statements.

"After carefully reviewing the commission's filings and statements at the ex parte TRO hearing, the court is concerned the commission made materially false and misleading representations that violated Rule 11(b) and undermined the integrity of the proceedings," the judge said.

Judge Shelby, an appointee of President Barack Obama, gave the SEC two weeks to **show cause** as to why the court should not impose sanctions.

Brent Baker of Parsons Behle & Latimer PC, who represents individual defendant Brendan Stangis in the case, said this kind of callout of the SEC is rare.

"I've been doing this for 25 years, and I have never seen a situation where the judge challenged the SEC and dissolved an ex parte temporary restraining order," he told Law360 in an interview.

The SEC said in a statement to Law360 that it is in receipt of the order to show cause and will respond to the court as directed.

The SEC sued Digital Licensing Inc., which did business as Debt Box, alongside four individual principles and 13 other defendants in August. It claims the firm sold licenses to access cryptocurrency that amounted to unregistered offers and sales of securities, and moreover accused the business of making false statements and engaging in deceptive conduct.

The agency won a temporary restraining order and receivership for the business in July, which was renewed through September. The order had required the SEC to convince the court that there was a likelihood Debt Box would cause irreparable harm.

The defendants challenged the decision in a September motion to dissolve, arguing the SEC hadn't shown irreparable harm and had obtained the order by making a "baseless" claim that the business was closing bank accounts in July. The defendants also said the SEC took a Debt Box executive's comments out of context to argue the firm was moving operations to Abu Dhabi to evade SEC scrutiny.

The court on Thursday sided with the defendants, contending that SEC attorney Michael Welsh made false statements and omitted context during a closed hearing on the agency's motion for a temporary restraining order as to why Debt Box posed a potential for irreparable harm.

Both the order reversing the TRO and the order to show cause detailed that the SEC had argued that the Debt Box entities had been closing accounts and moving funds and operations overseas in order to evade the SEC's jurisdiction, as well as erasing evidence by making certain online videos

inaccessible.

The orders noted that during the ex parte hearing, the SEC told the court that the Debt Box entities had closed dozens of bank accounts in the two days ahead of the hearing. Judge Shelby said in his Thursday order dissolving the TRO that he found the account closures to be "the most important evidence of irreparable harm without the requested TRO."

"But it was not true," he wrote.

Instead, the banks had closed the accounts, not Debt Box's promoter iX Global, the judge said, and there did not appear to be evidence that the closures occurred in the two-day period ahead of the hearing.

"The commission now acknowledges iX Global did not close the accounts but argues that fact is immaterial. The court disagrees. The commission discussed the account closures in a way that strongly suggested iX Global was closing accounts so it could move funds overseas and beyond the commission's reach," the judge said.

Judge Shelby also agreed the SEC failed to contextualize the comments made by a Debt Box executive in YouTube videos regarding the planned move to Abu Dhabi. The SEC led the court to believe that Debt Box's plans to move operations overseas also included moving assets and investor funds, the judge said.

However, the judge said Thursday that the full context of the video cited by the SEC "does not show defendants were in the process of moving assets or funds overseas."

In a transcript obtained by Law360 of an October hearing in which Judge Shelby discussed reversing the TRO and potentially issuing an order to show cause to the SEC, he noted that "the SEC made no effort to place that statement in context."

The SEC also told the court that the Debt Box businesses were removing evidence by making other YouTube videos inaccessible, but the court said in its order reversing the TRO that there was no evidence Debt Box knew about the investigation or that its removal of the videos was an attempt to obstruct the SEC's work.

"The context is crucial — the representations were made by a federal agency seeking an ex parte TRO and while later seeking to preserve the TRO," Judge Shelby wrote in his order to show cause. "TROs are extraordinary relief, and the TRO obtained here was no exception."

The SEC is represented in-house by Casey Fronk, Michael Edward Welsh and Troy K. Flake.

Digital Licensing Inc., Jason R. Anderson, Jacob S. Anderson, Schad E. Brannon, Roydon B. Nelson, and Relief Defendants Business Funding Solutions LLC; Blox Lending LLC; The Gold Collective LLC; and UIU Holdings LLC are represented by Jason P. Gottlieb, David E. Ross, Jeffrey D. Brooks and Alexander R. Yarm of Morrison Cohen LLP.

Benjamin F. Daniels, Mark W. Schuler, Alton O. Parker, B & B Investment Group LLC, and BW Holdings LLC d/b/a the "FAIR Project" are represented by Keith M. Woodwell, Thomas A. Brady and Katherine E. Pepin of Clyde Snow & Sessions PC.

Brendan J. Stangis is represented by Brent R. Baker and Brennan J. Curtis of Parsons Behle & Latimer PC.

Matthew Fritzsche is represented by Adam L. Grundvig of Kesler & Rust PC.

iX Global, Joseph A. Martinez, Travis A. Flaherty and Flaherty Enterprises are represented by Romaine C. Marshall, Jose A. Abarca and Jonathan E. Schmalfeld of Polsinelli PC.

The case is SEC v. Digital Licensing Inc. d/b/a Debt Box et al., case number 2:23-cv-00482, in the U.S. District Court for the Northern District of Utah.

--Editing by Haylee Pearl.

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