

DC Federal District Court Confirms *Jarkesy* Does Not Bar SEC From Seeking Industry Bars in Follow-On Proceedings

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In *Sztrom v. SEC*, the U.S. District Court for the District of Columbia confirmed that the U.S. Supreme Court's 2024 decision in *SEC v. Jarkesy*, which curtailed the Securities and Exchange Commission's (SEC) ability to seek civil penalties in its administrative forum, does not eliminate the agency's long-standing ability to pursue industry bars through administrative follow-on proceedings. The opinion underscores that, even after *Jarkesy* and other recent limits on agency power, the SEC may still use its in-house process to determine whether to bar previously enjoined defendants from the securities industry, with independent review limited to the courts of appeals.

Background

Michael and David Sztrom, California-based investment advisers, were sued by the SEC in 2021 in the Southern District of California for alleged violations of the Investment Advisers Act tied to advisory activity between 2015 and 2018. In 2022, they settled that case, consenting to injunctions and agreeing to pay \$25,000 each in civil penalties, without admitting or denying the allegations. In May 2023, the SEC initiated a follow-on administrative proceeding under the Advisers Act, seeking to bar them from the securities industry based on the agreed-to injunctions. While the SEC's Division of Enforcement moved for summary disposition in that administrative case, the Sztroms filed a separate action in the D.C. district court raising constitutional and statutory attacks on the follow-on proceeding. They alleged due process violations from the SEC's combination of investigative, prosecutorial, and adjudicative functions; an Article III violation in having an administrative law judge decide their fate; a jury-trial right before they could be barred from their profession; and a denial of statutory hearing rights.

Analysis

The SEC's motion to dismiss was granted in full. On jurisdiction, the court held that the Advisers Act's review scheme implicitly channels challenges like the Sztroms' jury-trial and hearing-rights claims to the courts of appeals, not district courts. Under controlling precedent, the plaintiffs can obtain meaningful judicial review only after the SEC issues a final order, at which point they may raise those arguments on petition for review. On the due process claim, the court held it was squarely foreclosed by a prior D.C. Circuit court decision, which upheld the constitutionality of agencies combining investigative, charging, and adjudicative functions.

Most significantly for post-*Jarkesy* practice, the court rejected the Sztroms' Article III challenge to the SEC's authority to adjudicate industry bars in an administrative forum. Relying on *Jarkesy* and prior D.C. Circuit decisions, the court emphasized the distinction between "private rights," which generally must be adjudicated in Article III courts, and "public rights," which Congress may assign to agencies. Unlike the civil fraud penalty regime at issue in *Jarkesy*, the SEC's follow-on proceeding against the Sztroms did not involve the initial imposition of

monetary penalties for common-law-type fraud claims. Instead, the SEC was exercising a remedial, public-interest function — deciding whether to impose a regulatory sanction (an industry bar) on individuals already enjoined in federal court. The court described this as a “self-consciously novel” regulatory mechanism focused on the public interest, not a traditional common-law claim. It noted that the SEC has used follow-on bar authority for decades without successful Article III challenges and that the D.C. Circuit has treated the “public interest” inquiry in such proceedings as distinct from private-rights adjudication.

By upholding the SEC’s ability to pursue industry bars in administrative follow-on cases, *Sztrom* confirms that *Jarkesy*’s Seventh Amendment and Article III limits on the SEC’s use of its administrative forum are context-specific. While *Jarkesy* restricts the SEC from using administrative adjudication to impose civil monetary penalties for securities fraud, *Sztrom* makes clear that the agency’s authority to seek nonmonetary remedial sanctions through follow-on administrative proceedings remains intact, with constitutional and procedural challenges reserved for review in the courts of appeals after a final SEC order.

The Sztroms have appealed this decision. We will continue to monitor this litigation and provide updates. We also expect others to bring similar challenges in other circuits, which could result in a split among them.

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