

Ninth Circuit Affirms Radical Bunny LLC Managers' Securities Violations

Article By:

Michael M. Rosensaft

Tenley Mochizuki

The US Court of Appeals for the Ninth Circuit upheld summary judgment in favor of the **Securities and Exchange Commission**, finding that managers of unregistered broker-dealer Radical Bunny LLC (Radical Bunny) failed to raise triable issues of material fact as to whether they sold “securities” or acted with scienter in making various false statements to investors.

The SEC alleged that, from approximately 2004 through 2008, Radical Bunny’s managers (collectively, Defendants) obtained over \$189 million from nearly 900 accounts by offering “participations” in loans from Radical Bunny to Mortgage Ltd., a mortgage lender. Defendants purportedly represented that the investments were secured and collateralized because investors would be named as beneficiaries in the deeds of trust on the underlying real properties, but in fact they were not so named.

In April 2011, the US District Court for the District of Arizona granted summary judgment to the SEC, holding that Defendants had engaged in the unregistered offer and sale of securities, and had committed securities fraud by making false statements to investors about the nature of their investments. Each of the Defendants was subject to a permanent injunction, disgorgement including prejudgment interest and a civil penalty of \$120,000.

On appeal, the Ninth Circuit affirmed. Although Defendants argued that they were not selling “securities,” the court noted that “a reasonable investor would have viewed the offering as involving an initial investment of money with the expectation of profit.” Further, because only the Defendants could exercise any control over the loans, and no regulatory scheme reduced the risk inherent in such investments, the court found the *Howey* test of a “security” to be met. The court also rejected Defendants’ other claims related to their alleged misrepresentations.

U.S. Sec. & Exch. Comm’n v. Radical Bunny LLC et al., Case No. 11-16275 (9th Cir. 2013).

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