

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-1228

September Term, 2002

Filed On: May 13, 2003 [748977]

Robert Schlien, *et al.*,

Petitioners

v.

Securities and Exchange Commission,

Respondent

On Petition for Review of an Order of the
Securities and Exchange Commission

Before: HENDERSON, RANDOLPH and GARLAND, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record from the Securities and Exchange Commission and on the briefs of counsel. It is

ORDERED that the petition for review be denied. Although the petitioners had a constitutional right to withhold the financial disclosure statements required by 17 C.F.R. § 201.410(c) on the basis of an asserted privilege against self-incrimination, the claim of privilege did not relieve the petitioners of their burden of production under the regulation.¹ *See United States v. Rylander*, 460 U.S. 752, 758-61 (1983). Accordingly, the Commission acted neither arbitrarily nor capriciously in drawing an adverse inference—that the petitioners have the funds to pay disgorgement—from their withholding of such financial information. 5 U.S.C. § 706(2)(A); *see Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). Given that federal agencies need not defer civil proceedings pending the outcome of criminal proceedings, *United States v. Kordel*, 397 U.S. 1, 11 (1970); *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368,

¹ 17 C.F.R. § 201.410(c) provides as follows: “Financial disclosure statement requirement. Any person who files a petition for review of an initial decision that asserts that person’s inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in § 201.630(b).”

1375 (D.C. Cir. 1980), the Commission likewise acted neither arbitrarily nor capriciously in denying the petitioners' request to postpone production of the required financial disclosures, 5 U.S.C. § 706(2)(A).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

For the Court:

Mark J. Langer, Clerk