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Ray Lucia's Sweetheart Settlement Proves that for the SEC the Sour Process Is the Punishment

Raymond Lucia v. U.S. Securities and Exchange Commission

Washington, DC (June 16, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights organization, has negotiated a [settlement](#) with the U.S. Securities and Exchange Commission (SEC) on behalf of its clients, [Ray Lucia Sr. and Raymond J. Lucia Companies](#). Mr. Lucia waged a long, contentious battle, refusing to bow to an agency with unlimited resources unwilling to admit that its prosecution efforts had become wholly disproportionate to the alleged infraction. Having fought this landmark case all the way to the U.S. Supreme Court once to vindicate his right to be tried before a lawfully appointed administrative law judge (ALJ), this settlement allows Ray to get on with his life.

In the settlement, Mr. Lucia neither admits nor denies wrongdoing, and he is immediately eligible to reapply for association with registered entities such as securities brokers as well as to serve as an employee for related entities. In exchange for the final resolution of all claims against him, Mr. Lucia has agreed to pay a penalty of \$25,000 and to drop his affirmative case against SEC.

From 2012 to 2017, SEC maintained a litigation position against Mr. Lucia that proved so erroneous that the Department of Justice took the extraordinary step of repudiating SEC's initial position at the Supreme Court. Yet, in defiance of the Supreme Court's admonition to retry Mr. Lucia before a lawfully appointed ALJ, SEC haled him before yet another ALJ who was and is just as unconstitutional as the first one. Ray will never get these years back. And yet Ray's presentation had been cleared by regulators numerous times, no client had complained about Ray to the SEC when it took issue with his business practices, Ray immediately offered to change the language to which SEC objected, and no SEC regulation or ruling had ever previously prohibited the language that he used.

Ray's affirmative case, which has been pending in the U.S. Court of Appeals for the Ninth Circuit, contends that the ALJs at the SEC are *still* unconstitutional, because they benefit from multiple layers of protection from removal—a position also urged by the SEC's counsel, the Solicitor General in that very case. The U.S. Supreme Court held in 2010 that such multiple layers of removal are unconstitutional for federal officers, because they violate the "take Care" provision of Article II of the Constitution under which the President must be able to fire his subordinates. When the Supreme Court held two years ago this week in *Lucia v. SEC* that ALJs are federal officers, it set the stage for the current constitutional challenge to those appointees.

This nominal fine represents a tiny fraction of the penalty sought by the SEC when it first filed charges against Mr. Lucia in 2012, and he has already incurred more than 40 times this amount while defending his constitutional rights. Mr. Lucia's commitment to go up against the powerful agency—for what he considered an unfair prosecution—also cost him irreparable professional, reputational, economic and emotional harm that few would dare to endure. The terms of this settlement pale in comparison to what Mr. Lucia has been put through, and it only goes to show that at the SEC the process *is* the punishment.

Rather than retrying the *Lucia* case before the Commission itself, the SEC ignored its due process obligation to bring enforcement actions in a lawful forum. Instead it doubled down on its unconstitutional process and sought to force Mr. Lucia back through a second, pointless unconstitutional administrative process that would deprive him of the right to challenge the ALJ's appointment until long after the unconstitutional proceeding and multiple appeals had taken place at great personal and further professional expense. Rather than endure yet another decade of devastating and drawn-out administrative punishment, Mr. Lucia has finally settled his case on favorable terms.

While Mr. Lucia's case is now over, NCLA currently represents [Christopher M. Gibson](#) and [Michelle Cochran](#) whose cases are two of more than one-hundred invalid SEC hearings nullified following the *Lucia v. SEC* decision and who are currently carrying on the fight to stop SEC from subjecting them to hearings before similarly unconstitutional ALJs.

NCLA released the following statements:

"NCLA is happy that Ray Lucia's ordeal is over. But the harm to Ray, his family, and his business is irreparable. This case is a wrenching example of annihilation by unlawful process. It never should have been brought in the first place. No rational—or constitutional—justice system would require such endless appeals and futile proceedings. NCLA looks forward to continuing the fight on behalf of other Americans caught in this Kafkaesque nightmare."—Peggy Little, Senior Litigation Counsel, NCLA. "

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"The Supreme Court recognized the SEC was wrong when it brought this case in 2012. But rather than defend its actions in court the agency settled for pennies on the dollar years later after having put Mr. Lucia through a punishing process. NCLA will not rest in our fight against administrative overreach on behalf of our clients."

—Caleb Kruckenberg, Litigation Counsel, NCLA

"Ray Lucia's heroic effort to stand up for due process and constitutional law and against retroactive regulation deserves a chapter in the annals of Administrative State David-and-Goliath stories. Someday soon, with NCLA's help, the Supreme Court will strike down SEC's unconstitutional ALJs. Until then Ray can rest easy knowing that he did his part to right this wrong—and then some."

—Mark Chenoweth, Executive Director and General Counsel, NCLA

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.