

The Supreme Court - June 22, 2020

Today, the Supreme Court of the United States issued the following opinion:

Liu v. SEC, No. 18-1501: The SEC brought a civil action against petitioners Charles Liu and Xin (Lisa) Wang, a married couple who solicited nearly \$27 million from foreign investors under a private offering memorandum promising that the bulk of the contributions would go towards construction costs of a cancer-treatment center. The SEC's investigation revealed that only a fraction of the funds were put towards a cancer treatment center, with most of the funds instead going towards marketing expenses and salaries, and a sizable portion going to personal accounts and a company under Wang's control. The District Court found for the SEC and pursuant to its authority to order "equitable relief" under 15 U.S.C. §78u(d)(5), ordered "disgorgement" equal to the full amount petitioners had raised from investors, less \$235,899 that remained in the corporate accounts for the project. But based on the Supreme Court's decision in *Kokesh v. SEC*, 581 U.S. ___ (2017), there was a question of whether disgorgement was available equitable relief. In *Kokesh*, the Court had found that a disgorgement order in an SEC enforcement action imposes a "penalty" for purposes of the applicable statute of limitations, but reserved the question of whether the SEC could pursue "disgorgement" as "equitable relief" under §78u(d)(5), given that equitable relief historically excludes punitive sanctions. The Ninth Circuit affirmed, acknowledging *Kokesh* and concluding under Circuit precedent that the "proper amount of disgorgement in a scheme such as this one is the entire amount raised less the money paid back to the investors." Today, the Court vacated and remanded, holding that a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under §78u(d)(5). Justice Sotomayor delivered the Court's opinion. Justice Thomas dissented.

The Court's decision is available [here](#).

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