



California Corporate & Securities Law

Court Slaps Down Section 25400 Market Manipulation Claim Against Convicted Felon

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Corporations Code Section 25400 is California's anti-market manipulation statute. The statute copied clauses (1) through (5) of Section 9(a) of the Securities Exchange Act of 1934 and declares unlawful specified actions intended to affect the market price of a security. Section 25500 establishes a civil remedy against any person who willfully participates in any act or transaction in violation of Section 25400.

Occasionally, issuers will complain that short sellers have issued false statements in order to drive down share prices. Sections 25400 and 25500 would seem to provide relief for these issuers. However, one issuer recently came to grief in its attempt to use these sections.

In *Medifast v. Minkow*, Case No. 10-CV-382 JLS (BGS) (S.D. Cal. March 29, 2011), Judge Janis Sammartino ruled that the plaintiffs failed to demonstrate a likelihood of success on their Section 25400 claim because they did not allege that they were purchasers or sellers of securities harmed by the defendants' alleged market manipulation. Accordingly, she granted the defendants' motions to strike under California's anti-SLAPP statute, Code of Civil Procedure Section 425.16. That statute allows a defendant to gain early dismissal of causes of action aimed at chilling the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances.

One of the defendants in the *Medifast* case, Barry Minkow, was not as fortunate in another market manipulation case. According to this [story](#) by Dean Calbreath in *The San Diego Union-Tribune*, Mr. Minkow recently pled guilty and was sentenced last month to 5 years in prison for manipulating the stock of another issuer. You can read the criminal complaint against Mr. Minkow [here](#).

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