



SEC's Fraudulent 401(k) Coin Scam Case Going to Jury Trial

A judge set a May date for a lawsuit brought by the Securities and Exchange Commission against Red Rock Secured, which is charged with cheating investors who held securities in retirement accounts.

By **Eva Thomas** | September 13, 2023

The **Securities and Exchange Commission's** case against an investment firm and three of its executives who allegedly duped hundreds of investors into selling off retirement account assets to buy gold and silver coins at markups, will go to a jury trial, a judge ordered Monday.

In May, the SEC filed a lawsuit against Segundo, California-based **Red Rock Secured**, charging it with cheating participants in 401(k)s and IRAs and federal employees in the Thrift Savings Plan. The SEC included Red Rock Chief Executive Officer **Sean Kelly** and two senior account executives, **Anthony Spencer** and **Jeffery Ward**, as defendants in the lawsuit.

The SEC requested a jury trial as part of the original complaint, and on Sept. 8, the three executives also asked for a jury trial, according to filings in California Central District Court.

Red Rock targeted "right-wing, conservative" participants in 401(k)s, IRAs or the TSP, in email and advertising campaigns, soliciting them to transfer retirement savings into gold and silver coins with undisclosed price markups of up to 130%, according to the SEC's complaint.

Red Rock allegedly told investors "they could protect their assets from the losses posed by stock market risk through diversification by converting their securities into gold and silver, and, in particular, coins sold by Red Rock, which defendants misleadingly promoted as tangible assets that would always have value and typically increase in value," the complaint said.

At least 700 clients allocated more than \$50 million from their retirement accounts, including the TSP, to the Red Rock coins, and the markups netted the company and its principals more than \$30 million, the SEC said in the complaint.

District Judge **Gary Klausner** set the jury trial date for May 14, 2024, court filings show.

The SEC declined to comment.

Attorneys for Red Rock, Kelly, Spencer and Ward did not respond to requests for comment.

The SEC accused Spencer of making false and misleading statements regarding Red Rock's charges.

For example, Spencer told a potential Red Rock client that the client would pay a fee of "1.83% or \$1,830 exactly if he transferred \$100,000 from his 401(k) account to purchase coins from Red Rock," according to the complaint.

Although the client paid Red Rock \$100,000 to purchase “premium coins,” the company used just \$44,000 to purchase the coins, meaning the client “unwittingly” paid a markup of \$66,000 for his coins, the complaint says.

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Red Rock called the SEC’s lawsuit an “attempt to regulate an industry by enforcement, rather than legislation,” according to court documents filed on Thursday before the court ordered a jury trial.

Typically, the SEC doesn’t venture into the “401(k) area,” said **Jacob Zamansky**, a securities lawyer and founder of **Zamansky**, who is not involved with the case.

However, he said, because federal employees are affected, the SEC got involved.

Additionally, Zamansky thinks that the SEC is more focused on Red Rock’s “egregious conduct” than the details of the 401(k)s and the other retirement accounts.

The alleged fraud may have involved retirement plans and “right-wing” federal employees because it is easier to say the “same things to the same types of people,” said **Jeff Kern**, a partner at **Sheppard Mullin**, who is not involved in the case.

“It’s more efficient, and a profitable fraud scheme relies on efficiency,” he said.

Both Kern and Zamansky said they aren’t surprised the case is going to a jury trial.

However, “the conduct here is anti-consumer and anti-investor, and I can’t imagine a jury would be sympathetic to that,” Zamansky said.

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