

# Judge Won't Pause Dismissal Of \$114M Discord Stock Case

By [Catherine Marfin](#) · [Listen to article](#)

*Law360* (April 4, 2024, 4:46 PM EDT) -- A Houston judge has denied a bid from federal prosecutors to pause the dismissal of an indictment that accused eight men of running a \$114 million pump-and-dump stock scheme, writing that the government's argument for a stay largely rehashes the merits of dismissing the case and "is not particularly persuasive."

U.S. District Judge Andrew S. Hanen's four-page [order](#) Wednesday comes two weeks after he decided to [dismiss](#) a 21-count indictment against defendants John Rybarczyk, Perry "PJ" Matlock, Edward Constantinescu, Gary [Deel](#), Stefan Hrvatin, Tom Cooperman and Mitchell Hennessey, a decision the government appealed Friday morning.

Judge Hanen's ruling was largely based on two 2023 appellate court decisions reining in corruption prosecutions. Shortly after Judge Hanen issued his order, the government moved to [pause the dismissal](#), arguing it was likely to win a Fifth Circuit appeal.

But Judge Hanen wrote Wednesday that the "government's arguments run into the same problems as before," namely by glossing over the [U.S. Supreme Court](#) case [Ciminelli v. U.S.](#) , one of the two appellate decisions he relied on in dismissing the case. Ciminelli limited fraud cases to those that strip victims of property or money.

The government instead focused on a Fifth Circuit decision, [U.S. v. Greenlaw](#) , which held in part that an "intent to defraud" has to include two elements: an intent to deceive and an intent to cause harm through that deceit.

"Despite the Fifth Circuit's language in Greenlaw that a defendant cannot be convicted on 'deceit alone,' deceit alone appears to be all that the government believes it must prove," Judge Hanen wrote Wednesday.

He wrote that while he agrees with the government's assertion that the "success of the scheme is immaterial" — a quote prosecutors directly pulled from the Greenlaw decision — "it is to some extent taken out of context."

"Due to this language, though, the government seems to believe it does not need to prove (or allege) a scheme depriving individuals or entities of money or property in order to convict these defendants of securities fraud," the order reads. "The government did not before and does not now explain how this scheme, as alleged, is one covered by the statute."

When he dismissed the indictment, Judge Hanen wrote that the alleged scheme, in which the defendants were accused of using social media platforms like [Discord](#) to [inflate the price of stock](#) so they could sell their shares at higher prices, didn't deprive investors of money or property, only of the information needed to make prudent financial decisions.

"If this court's ruling was in error as the government argues, the Fifth Circuit can merely reinstate the indictment," Judge Hanen wrote Wednesday. "In doing so, hopefully, it will clear up some of the many issues that would have made trying this case at this stage nearly impracticable."

One of those issues includes clearing up whether the two requirements for a scheme to defraud "are conjunctive or disjunctive" under Greenlaw, a distinction the judge said "could be pivotal here."

Judge Hanen added that a civil case against the group filed by the [U.S. Securities and Exchange Commission](#) over the same conduct is still pending, which "should be enough for the individuals to think twice before engaging in any questionable activities."

Matthew Aaron Ford of [Ford O'Brien Landy LLP](#), counsel for lead defendant Constantinescu, said the court's ruling "reaches the right result given the apparent defects in the government's failed case."

Neal Andrew Davis, counsel for Deel, told Law360 that the government "does not seem to get the message that the defendants never committed any crime," adding that he was "pleased" with Judge Hanen's order.

Luis A. Reyes and Johnny Sutton of Ashcroft Sutton Reyes LLC, counsel for Matlock, likewise said the government's motion to stay was "wholly without merit."

"As Mr. Matlock laid out in filings from late last year, the Supreme Court holding in Ciminelli is dispositive," Reyes said. "Mr. Matlock's alleged actions, as a matter of law, did not constitute a scheme to deprive anyone of a property interest. The recent court order again confirms this loudly and clearly. Mr. Matlock is gratified to move forward."

Eric Samuel Rosen of [Dynamis LLP](#), counsel for Rybarczyk, said the government faces "an uphill battle" with any appeal.

"We are pleased that the court recognized that the government failed to meet its burden warranting a stay of the dismissal pending an appeal, which the government has not yet even confirmed that it will do," he told Law360.

Q. Tate Williams of [Hilder & Associates PC](#), who represents Rybarczyk, likewise said Judge Hanen's order "further highlight[s] the indictment's deficiencies."

"We are extremely optimistic that dismissal will stand," he added.

Carlos M. Fleites of Carlos M. Fleites PA told Law360 Friday that Judge Hanen's order was "thorough, thoughtful, and consistent with recent developments in the law" and that was "confident" the Fifth Circuit would affirm the decision.

A spokesperson for the [U.S. Department of Justice](#) declined to comment Thursday. Counsel for Cooperman did not immediately return a request for comment.

The government is represented by Thomas Heyward Carter of the Office of the U.S. Attorney for the Southern District of Texas, and Scott Philip Armstrong and John J. Liolos of the DOJ's Criminal Division.

Constantinescu is represented by Matthew A. Ford, Jamie Hoxie Solano and Stephen R. Halpin III of Ford O'Brien Landy LLP.

Matlock is represented by Luis A. Reyes and Johnny Sutton of Ashcroft Sutton Reyes LLC.

Rybarczyk is represented by Philip H. Hilder, Q. Tate Williams and Stephanie K. McGuire of Hilder & Associates PC, and Eric Samuel Rosen of Dynamis LLP.

Deel is represented by Neal Andrew Davis.

Hrvatín is represented by Carlos M. Fleites of Carlos M. Fleites PA.

Cooperman is represented by Chip Lewis of Chip Lewis Law.

Hennessey is represented by Laura M. Kidd Cordova and Michael J. Murtha of [Jackson Walker LLP](#).

Knight is represented by Cordt Cullen Akers of [The Akers Firm](#).

The case is U.S. v. Constantinescu et al., case number [4:22-cr-00612](#), in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Spencer Brewer. Editing by Adam LoBelia.

*Update: This story has been updated with additional information and comments from the defendants' counsel.*

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## Case Information

### Case Title

[USA v. Constantinescu, et al.,](#)

### Case Number

[4:22-cr-00612](#)

### Court

Texas Southern

### Nature of Suit

### Judge

[Andrew S Hanen](#)

### Date Filed

December 07, 2022

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- [Akers Firm](#)
- [Dynamis LLP](#)
- [Ford O'Brien](#)
- [Hilder & Associates](#)
- [Jackson Walker LLP](#)

## Companies

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- [Discord Inc.](#)

## Government Agencies

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