

United States Court of Appeals For the First Circuit

No. 19-2006

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff, Appellee,

v.

JONATHAN MORRONE, individually and d/b/a JM International, Inc.,

Defendant, Appellant,

Z. PAUL JURBERG, individually and d/b/a Brookline Capital
Partners, Inc.; ANTHONY ORTH, individually and d/b/a Grand
Traverse Equities, Inc.; MAY'S INTERNATIONAL CORPORATION,

Defendants,

BRETT HAMBURGER, d/b/a JCBH Consulting, LLC,

Defendant/Third-Party Plaintiff,

BIO DEFENSE CORPORATION; MICHAEL LU, individually and d/b/a
May's International Corporation,

Defendants/Third-Party Defendants,

DAVID SMITH; ONEIGHTY C TECHNOLOGIES,

Third-Party Defendants.

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APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Douglas P. Woodlock, U.S. District Judge]

Before

Lynch, Lipez, and Thompson,
Circuit Judges.

Steven M. Kaplan, with whom Rosenfeld & Kaplan, L.L.P. was on
brief, for appellants.

Theodore Weiman, Senior Litigation Counsel, Securities and
Exchange Commission, with whom Michael A. Conley, Acting General
Counsel, Securities and Exchange Commission, and Tracey A. Hardin,
Assistant General Counsel, Securities and Exchange Commission,
were on brief, for appellee.

May 10, 2021

LYNCH, Circuit Judge. Appellants Jonathan Morrone and Z. Paul Jurberg were senior officers at Bio Defense Corporation, a United States company whose stated purpose was to develop and sell a machine to clean and decontaminate mail. The United States Securities and Exchange Commission ("SEC") alleged that Morrone and Jurberg solicited investments in Bio Defense from investors in violation of the federal securities laws. The district court granted in part summary judgment in the SEC's favor. SEC v. Bio Def. Corp., No. CV 12-11669-DPW, 2019 WL 7578525, at *35 (D. Mass. Sept. 6, 2019). On appeal, Morrone and Jurberg argue that the district court erred in applying the U.S. federal securities laws to their solicitation of foreign investors in light of the Supreme Court's decision in Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010). Alternatively, they argue that genuine issues of fact precluded entry of summary judgment in favor of the SEC on some of its claims. We find no error and affirm.

I. Facts

A. Bio Defense

Bio Defense is a Delaware corporation with its principal place of business in Massachusetts. It was founded in 2001 by Michael Lu in response to the widely publicized mailing of letters containing anthrax after the September 11, 2001 terrorist attacks. Lu said that he wanted Bio Defense to manufacture a machine, the

MailDefender, capable of decontaminating letters of biological pathogens.

Morrone joined Bio Defense¹ in 2002 as its Senior Executive Vice President and as a member of the company's board of directors. He had previously worked as a licensed registered representative at various broker-dealers. Bio Defense paid Morrone through JM International, Inc., a corporation Morrone controlled.

Jurberg joined Bio Defense around 2003 as a senior officer. Like Morrone, he had previously worked as a registered representative at various broker-dealers. Jurberg was also the president of Brookline Capital Partners, Inc., the entity through which Bio Defense paid him.

In addition to Morrone and Jurberg, Bio Defense made two other hires relevant to this appeal. First, it hired Brett Hamburger in 2002 or 2003 as a consultant to help generate leads for prospective investors. Bio Def. Corp., 2019 WL 7578525, at *1. Hamburger had previously worked as a registered representative for various brokerage firms. Id. at *2-3. However, in 2000, he was barred by the National Association of Securities Dealers for acting as an unregistered broker, and in 2003, he was convicted of conspiracy to commit securities fraud for activities unrelated to

¹ Bio Defense was previously called Life Max. Life Max became Bio Defense at some point in the early 2000s.

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