

Round Three of the Merchant Capital/SEC Appeal

The Law Firm of Gregory Bartko, LLC announced today that the long running saga between the U.S. Securities and Exchange Commission ("SEC") and Merchant Capital, LLC ("Merchant Capital") marches on for the third time before the Eleventh Circuit Court of Appeals in Atlanta, Georgia. Filing its brief on appeal yesterday through Bartko's office, Merchant Capital contends, as others have in the past, that "enough is enough."

Atlanta, GA ([PRWEB](#)) December 23, 2009 -- The Law Firm of Gregory Bartko, LLC announced today that the long running saga between the U.S. Securities and Exchange Commission ("SEC") and Merchant Capital, LLC ("Merchant Capital") marches on for the third time before the Eleventh Circuit Court of Appeals in Atlanta, Georgia. Filing its brief on appeal yesterday through Bartko's office, Merchant Capital contends, as others have in the past, that "enough is enough." After over seven years of contesting civil securities violations brought by the SEC against Merchant Capital and its founders, United States Judge Marvin Shoob of the Northern District of Georgia, has written well over 150 pages of opinions in the trial court which exonerated Merchant Capital, only to have each of those opinions overturned on appeal by the SEC to the Eleventh Circuit Court of Appeals.

In its most recent brief filed with the appeals court, Merchant Capital continues to highlight the fact that when the Merchant Capital case went to trial, the SEC enforcement division failed to adequately establish the very arguments that the SEC has repeatedly made on appeal. Bartko contends in the brief filed by Merchant Capital, that "the SEC had its day in court before Judge Shoob, but failed to properly allege or prove to Judge Shoob's satisfaction that there was any fraud involved in the manner that Merchant Capital was organized or operated." Bartko also notes on appeal that "the SEC fails to recognize that it failed to carry its burden of proof at trial and that it appears that the SEC has elected to continue its quest, ad infinitum until it gets the results it wants." Bartko states that "only the Government can pursue such a strategy of attrition compared to the limited resources of most private businesses." Bartko encourages the judiciary in his brief to the appellate court to "check" the executive branch of government, such as the SEC, under circumstances evident in the Merchant Capital case, where private litigants simply run out of financial and emotional resources.

In Judge Shoob's most recent favorable opinion rendered July 28, 2009, he stated that "the Court finds the conduct of the SEC in this matter much more egregious than the conduct of the defendants" (Merchant Capital and its founders). Judge Shoob's opening paragraph of his July 28, 2009 opinion commented that "While studiously ignoring Bernard Madoff and the largest Ponzi scheme in American history, plaintiff Securities and Exchange Commission has relentlessly pursued defendants in this case." "Nevertheless, after nearly seven years of litigation and the expenditure of untold resources that could have been better spent pursuing crooks like Mr. Madoff, the SEC is back before this Court demanding a permanent injunction as well as disgorgement, penalties and interest in excess of \$10.0 million." Judge Shoob denied that relief to the SEC calling any securities violations by Merchant Capital as "unintentional."

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