

Judge Sorokin lets Howard Present know that his crushing \$12.4M penalty in F-Squared case reflects remorselessness, failure to heed advice and scapegoating innocent parties, *RIABiz*, ft. *Brendan McGarry*

Brendan P. McGarry, attorney in the Kaufman Dolowich & Voluck Chicago office, was quoted in RIABiz's article by Lisa Shidler on the F-Squared case.

U.S. District judge wants public record to show the ex-CEO still seems inclined to commit further violations, leaving no choice but to be ruthless in meting out justice.

Howard Present likely wagered that his trip through district court after a damning SEC investigation simply couldn't get any worse.

The judge in the Massachusetts case is determined to let the record show that the strategy of the founder and former CEO of F-Squared to proclaim a no-harm, no-foul defense will cause him irreparable harm.

"His failure to recognize the harm of his misrepresentations, his sustained willingness to make ever-bolder statements without any support, and his inability to appreciate his own role in misleading investors now all indicate a reasonable likelihood of further violations," writes U.S. District Court of Massachusetts judge Leo Sorokin in his March 21 order.

Present was ordered to pay \$12.4 million. The Securities and Exchange Commission reached a settlement with F-Squared in 2014 for \$35 million and the firm agreed to admit wrongdoing.

Disdain

Present's no-apologies strategy all but certainly cost him more in the end, says Brendan McGarry, a Chicago-based attorney with Kaufman Dolowich & Voluck LLP. McGarry represents advisors and broker-dealers in the financial services industry.

"The orders and the final judgement written by the judge point several times to Mr. Present's failure to understand his wrongfulness and inability to appreciate his own role in misleading investors. It's all indicating future violations," he said.

'Earnings capacity?'

"This is certainly very close to exactly what the SEC requested initially," McGarry says. "Whether or not it's worst case scenario — perhaps it is. I don't know if the SEC could have asked for any more."

'Fails to understand'

And Present's go-for-broke push may persist, McGarry says.

"I don't know if this is the end of it. My guess is that they're considering all of their options to review the decision."