



Court Throws Out Crypto Case Against SEC

A California court granted the agency's motion to dismiss a lawsuit from a law firm that wanted clarification as to whether digital assets can be considered securities.

By **Eva Thomas** | August 1, 2023

A judge has dismissed a case filed by a cryptocurrency law firm against the **Securities and Exchange Commission**, according to a ruling California's Southern District Court filed on Friday.

Hodl Law claimed in a November lawsuit that the SEC had not clarified its authority over digital assets, such as Ethereum, which creates liability for firms that use the cryptocurrency, according to a complaint filed in California's Southern District, as **reported**.

"It's clear now from the ruling that the SEC has no official position on Ethereum and the Ethereum network," said **Fred Rispoli**, founder and managing partner of Hodl Law.

In the court's approval of the SEC's motion to dismiss, it said that Hodl Law was unable to prove that the firm was at risk because of the SEC's failure to define Ethereum as a security.

An SEC spokesperson declined to comment.

"The possibility that the SEC may file suit against the plaintiff is not definite and concrete, nor does it touch 'the legal relations of parties having adverse legal interests,'" the court order says.

The firm wanted the SEC to provide more clarity on when digital asset users are liable under agency rules, according to the complaint that was filed on Nov. 21, 2022.

Hodl Law stated that the SEC should float a rule that lays out whether Ethereum is a security, because investors in the cryptocurrency are vulnerable to enforcement actions without clear compliance parameters from the agency.

The law firm alleged that it, "along with millions other individuals and businesses," was "subject to imminent harm," including criminal and financial risk, because of the SEC's failure to communicate, the complaint says.

SEC Chair **Gary Gensler** has never publicly said whether the agency considers Ethereum a security, despite being asked dozens of times by Congress, financial institutions and the press, the complaint notes.

In June 2018, the then-director of the SEC's Division of Corporate Finance, **William Hinman**, gave a speech in which he stated that "the Ethereum [N]etwork and its decentralized structure, current offers and sales of Ether are not securities transactions."

His speech was the SEC's most apparent stance to date on whether Ethereum could be regulated like a security, Hodl Law alleged in the complaint.

The court ruled that Hinman's speech was not "binding authority."

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"Nor do they support plaintiff's conclusion that the SEC has formally adopted the position that the Ether Network and Ether DCUs are not securities," the documents state.

Whether cryptocurrencies are securities should be determined within the legislative process and not by the courts, said **Sander Ressler**, managing director of **Essential Edge Compliance Outsourcing Services**, who is not involved in the case.

"If it's not a security, crypto sure behaves like a security. The business is rife with fraud and bad actors," Ressler said.

"A strong regulatory system of rules that governs behavior plus authority to enforce those rules is critical," he said.

Hodl Law wanted to put an end to what it described as "purposeful public ambiguity" around Ethereum's status, asking the judge to declare that Ethereum is not a security or investment contract under the Securities Act.

The firm also sought an undetermined amount in damages.

Even if the SEC determined that the transactions involving Ethereum or Ether were to be sold as a security, "it remains that such a decision would harm Hodl Law," court documents dismissing the complaint said.

Hodl Law is exploring appealing the court's ruling, Rispoli said.

In the end, the cryptocurrency industry just wants "clarity from regulators," added Ressler.

In May, Grayscale Investments and Bitwise Asset Management withdrew plans to launch Ethereum futures ETFs about a week after filing for them, signaling that the SEC quietly declared the funds dead on arrival. Multiple fund firms have filed for Ethereum futures ETFs in the past, including **Kelly Strategic Management, ProShares** and **VanEck**, but each was withdrawn more than a year ago.

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