U.S. Supreme Court limits SEC's power to seize illegal profits

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The U.S. Supreme Court on Monday ruled unanimously to limit the Securities and Exchange Commission's power to seize illegal profits.

The nine justices overturned a lower court ruling that the SEC is not bound by a five-year statute of limitations for "disgorgement" of the funds.

But Justice Sonia Sotomayor, the author of the opinion, wrote: "Disgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under §2462. Accordingly, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued."

In 2016, the SEC recovered almost $3 billion of these type of payments, which was twice as much as the regulators collected in other penalties.

The case was filed by Charles R. Kokesh, a New Mexico man who was sued by the SEC for misappropriating investors' money in 2009. A jury found he misappropriated money from four investment companies he controlled and a judge ordered him to pay a $2.4 million civil penalty, plus $35 million in disgorgement -- the same amount he was found to have misappropriated. Kokesh said only $5 million was within five-year statute of limitations from when the agency filed its claims. The rest dated back to 1995.

The Denver-based 10th U.S. Circuit Court of Appeals ruled against Kokesh.

The five-year statute of limitations legal provision doesn't explicitly mention disgorgement and instead it applies to "enforcement of any civil fine, penalty or forfeiture."

The Justice Department argued that disgorgement is different because, rather than being punishment, it is focused on ensuring a violator doesn't profit from illegal conduct.

Sotomayor said disgorgement "bears all the hallmarks of a penalty." She noted few funds collected by the SEC go to the victims and some end up with the U.S. Treasury.

"It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate," Sotomayor wrote in the 11-page ruling.

Briefs supporting Kokesh's high court appeal were filed by the Securities Industry and Financial Markets Association, a trade group that represents Wall Street firms, as well as the Cato Institute and Dallas Mavericks owner and TV personality Mark Cuban.

"Allowing the SEC to pursue stale claims would actually weaken the enforcement of the securities laws," the Cato Institute said in its brief. "It would tempt the agency to pursue conduct that ended long ago, distract the agency from its stated priorities of pursuing current malfeasance and mislead Congress and the public into believing that modern markets are rife with misconduct."