New York court dismisses case against former stock exchange head

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In a victory for the ultra-wealthy, the New York State Court of Appeals on Tuesday dismissed all remaining charges against former New York Stock Exchange chairman Richard Grasso in a case, *People v. Grasso*, brought by the state over the size of his last compensation package in 2003.

Grasso's total compensation was worth $187.5 million, awarded by a board of directors handpicked by Grasso himself from amongst companies over which he had nominal regulatory authority. Overriding a 2006 order by a lower court to return part of his $112 million retirement pay, the appeals court ruled that Grasso was entitled to keep every penny of this sum.

The court also threw out related charges against Kenneth Langone, the chairman of the NYSE's Compensation Committee and a member of the board in 2003. The state Attorney General's office indicated that it would not pursue the charges any further.

Concerned by public outrage and criticism by investors and regulators, the board forced Grasso to resign from his position just 20 days after his pay was made public. In May 2004, the Attorney General's office, then led by Eliot Spitzer, filed six charges against Grasso for excessive pay. State law requires that executives of not-for-profit entities be paid "reasonable" amounts.

In 2006, the NYSE merged with Archipelago Holdings, an electronic securities trading exchange, to become the explicitly for-profit NYSE Group. The following year, four of the charges were dismissed by the state appeals court, which ruled that the attorney general did not have authority to bring the charges against the Exchange. In both the 2007 decision and the July 1 ruling, the same judge, James McGuire, authored the majority opinion.

The two remaining charges—relating to "unlawful payments" and breach of fiduciary duty as a regulator—centered on the fact that during Grasso's tenure, the NYSE was classified as a non-profit entity and thus subject to state laws limiting executive compensation.

In dismissing the charges Tuesday, McGuire ruled that "the Attorney General's authority to prosecute the causes of action seeking that relief lapsed with the merger." In other words, the prosecution was no longer relevant because the NYSE was no longer considered a not-for-profit operation. Therefore, the excessive pay awarded to its former regulatory chairman was of no public concern and did the public no harm.

McGuire further suggested that the case was a waste of taxpayer money. In his opinion, McGuire wrote, "Here, the Attorney General is using public funds out of appropriations to his office to prosecute causes of action on behalf of an entity that is no longer a not-for-profit corporation and seeks only a money judgment that would benefit the owners of the for-profit entity into which the not-for-profit has been converted (even if the judgment nominally would be paid to the not-for-profit corporation). The Attorney General's continued prosecution of these causes of action ... vindicates no public purpose."

McGuire wrote that because the NYSE incorporated itself as an explicitly for-profit entity, the right to recovery of funds awarded to Grasso no longer belonged to the state, but to the NYSE's "successor" incorporation.

Essentially, the court's ruling has given the huge payout legal protection from any public governance by invoking the supposed sovereignty of the profit-taking entity.

The court was split in its decision, 3 to 1. Justice Angela Mazzarelli, the lone dissenter, insisted the stock

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exchange's incorporation as a for-profit entity "has no effect whatsoever upon the causes of action that were pending against the not-for-profit at the time of the merger."

Mazzarelli warned that the ruling "would open the door to a feeding frenzy for con men and swindlers to raid assets of not-for-profit corporations they control and then evade prosecution and responsibility by merging with a for-profit corporation."

This prediction McGuire wrote off as a "parade-of-horrors argument." "The short and complete answer to this," the majority opinion countered, "is that, regardless of what might possibly occur with respect to some other not-for-profit corporation, 'con men and swindlers' certainly played no role at all in the transactions resulting in the merger of the Exchange into a for-profit entity."

The economic developments of the past several years, of course, undermine this assertion. While it is unlikely that the purpose of the transformation of the NYSE into a for-profit corporation was to shield Grasso from litigation on behalf of the public, it can hardly be disputed that the "con men and swindlers"—better known on Wall Street as billionaire speculators and hedge fund managers—have benefited enormously from the abandonment of the least pretense of oversight.

It must be noted that during Grasso's eight-year tenure as regulatory head at the NYSE, one major accounting scandal after another unfolded, dubious and outright illegal financial dealings became the standard for banking and securities trading, a series of speculation "bubbles" were inflated only to collapse at the expense of the working class, and the economic disparity between Wall Street and corporate managers and the rest of the population widened astronomically. Grasso's last big payout was one of the purest expressions of this rot.

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