

BFA Defeats Motion to Dismiss in Elastos Securities Litigation

BFA has achieved an important win for investors of unregistered digital assets offered and sold by the Elastos Foundation and its senior executives. On December 9, 2021, Judge Gregory H. Woods of the Southern District of New York denied the Defendants' motion to dismiss the Lead Plaintiffs' Amended Complaint in its entirety.

The case alleges that Elastos and its senior executives offered and sold ELA Tokens, which are digital assets that the Defendants marketed as the "intrinsic token on the Elastos blockchain" that could "be used for trading, investing in digital assets, paying for blockchain processing fees and so on." Plaintiffs allege that these ELA Tokens are securities as defined by the federal securities laws, and that the Defendants' offered and sold these securities without registering them with the SEC in violation of Sections 5, 12(a)(1), and 15 of the Securities Act of 1933.

The Court ruled that the Amended Complaint properly alleges violations of the Securities Act, and in so doing adopted nearly all of BFA's arguments. Specifically, the Court ruled that the Defendants are subject to the Court's jurisdiction and that the Amended Complaint properly alleged timely violations of the Securities Act related to the sale, offer, and/or delivery of ELA Tokens in the initial coin offering ("ICO"), on the secondary market, and in connection with Elastos' lock-in program, whereby Elastos offered investors additional ELA Tokens in exchange for the investors agreeing not to sell their tokens for a predetermined length of time.

Notably, on a question of first impression in this District, Judge Woods rejected the Defendants' argument that Section 12(a)(1) – which creates a private right of action for violations of Section 5, which prohibits sales of unregistered securities – is limited by its terms to offers or sales in connection with an initial distribution – in this case, the ICO. Instead, Judge Woods adopted BFA's argument that Section 12(a)(1) extends to any and all violations of Section 5, which can result from initial or secondary sales of securities.

The case will now proceed to discovery.

A copy of Judge Woods' Opinion and Order can be found under Downloads to the right.