

SEC Not Kidding about Subpoena Enforcement Actions, Obtains Coronati's Arrest

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Here's one of the questions I get from some individual clients when they receive subpoenas from the SEC: Could I get arrested over this? Well, no. First things first – The SEC has civil authority, not criminal authority. Unless the Justice Department or some state criminal authority gets involved, you're not going to be arrested. But Anthony Coronati may make me modify this answer.

We covered his case late last year as part of a recent spate of subpoena enforcement actions filed by the SEC in New York and California. We ended with the anodyne warning that you might want to take the Commission's administrative subpoenas seriously, lest you get dragged into a fight over subpoenas that supersede the underlying investigations.

Coronati doesn't appear to have been listening. The SEC had been investigating whether entities controlled by Coronati solicited investments relating to the securities of companies such as Facebook that investors hoped would later hold IPOs. The SEC is interested in knowing whether Coronati commingled investor funds with other money in an account he controlled and used it to pay personal expenses. Despite two SEC investigative subpoenas, at that point Coronati had neither produced documents nor appeared for testimony.

A November 17, 2013 court order required Coronati to comply with the subpoenas. On January 17, things went from bad to worse, and the district court found Coronati in civil contempt for ignoring the prior order. The order requires Coronati to pay \$4,812 to the SEC to reimburse the agency for its costs of serving him with court papers in this proceeding. The U.S. Marshals Service arrested Coronati on January 23rd. At a hearing, the court ordered Coronati released on \$50,000 bond and restricted his travel to the Southern and Eastern Districts of New York.

After all that, it appears that Coronati may have gotten the message. The court ordered a further hearing on Feb. 6th, but that hearing has been suspended for two weeks while his attorneys give assurances of his cooperation with the SEC. You know how Jalen Rose and Bill Simmons warn each other in their podcasts not to get fired when they get too close to politically sensitive subjects? If you get a subpoena from the SEC, be smart, consult with competent counsel, and don't get arrested.