

SEC v. Asante K. Berko (E.D.N.Y. 2020)

Nature of the Business.

Asante Berko, a United States citizen, was an executive of an unnamed U.K.-based financial services company. The company is a wholly-owned subsidiary of an unnamed publicly traded bank holding company based in the United States. The holding company has common stock registered with the SEC pursuant to Section 12(b) of the Exchange Act. The SEC alleges that Berko acted as an agent of the U.S.-based issuer.

Influence to be Obtained.

The SEC alleges that between 2015 and 2016, Berko bribed government officials in Ghana to secure a contract to build and operate an electrical power plant in Ghana for a client of Berko's company. The SEC also alleges that the client, a Turkish energy company, transferred at least \$2.5 million to a Ghana-based intermediary, all or most of which was used to bribe government officials to secure the contract. Berko, according to the SEC, misled his employer's compliance personnel about the true nature of payments to the intermediary company.

In addition to the \$2.5 million sent to the third-party intermediary, Berko allegedly personally paid at least \$66,000 to members of the Ghanaian parliament and other government officials to secure approvals for the power plant. In return for his efforts, Berko's financial services company would allegedly earn over \$10 million in fees and, according to the SEC, Berko further expected to be independently compensated by the Turkish energy company.

On April 13, 2015, the Turkish energy company allegedly agreed terms with the Ministry of Power of Ghana for the energy contract that Berko had sought to secure.

Enforcement.

On April 13, 2020, the SEC filed a complaint alleging Berko violated the anti-bribery provision of the FCPA, and aided and abetted the violation of the anti-bribery provision of the FCPA.

On June 23, 2021, the SEC entered into a final judgment with Berko and ordered him to disgorge \$275,000. He was also ordered to pay \$54,163.92 in prejudgment interest for a total fine of \$329,163.92.

Key Facts

Citation. *SEC v. Berko*, No. 1:20-cv-01789 (S.D.N.Y. 2020).

Date Filed. April 13, 2020.

Country. Ghana.

Date of Conduct. 2015 – 2016.

Amount of the Value. Approximately \$2,760,000.

Amount of Business Related to the Payment. More than \$10,000,000.

Intermediary. Third-party Intermediary.

Foreign Official. Unnamed Government Officials in Ghana, including members of Parliament.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Final Judgment.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States and Ghana (dual-citizen).

Total Sanction. \$329,163.92.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. \$329,163.92.