

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Platkin v. Kizito **A-0739-22**

When is the last time you read a great opinion on statutory interpretation? A few weeks ago? A few months ago? Never? Well, now you can answer, “Today.”

The case involved Owusu A. Kizito, a New Jersey-based operator who—through his entities Investigroup LLC and Investigroup NP—was found to have solicited more than \$16 million from investors under false pretenses. After entering default judgment, the trial court awarded the state Bureau of Securities over \$15 million in restitution and civil penalties, but denied its request for disgorgement, citing what it saw as a statutory limit: that N.J.S.A. 49:3-69(a)(2) authorized restitution or disgorgement, but not both.

On appeal, however, the Appellate Division zeroed in on the interpretive weight of the word “or”—a seemingly small conjunction that, under scrutiny, became a hinge for broader principles of legal construction. Writing for the panel, Judge Smith applied a textualist lens, explaining that while “or” is traditionally disjunctive, it does not preclude a conjunctive reading when such an interpretation better reflects legislative purpose.

In the Appellate Division’s view, the trial court’s narrow reading created a statutory absurdity: restricting judges to a single remedy in cases where layered financial misconduct demands more. Relying on both New Jersey precedent and persuasive authority from other jurisdictions, including federal securities law and Oklahoma’s high court, the panel concluded that the statute’s use of “rescission, restitution or disgorgement” must be read functionally as “and/or”—particularly given the law’s remedial goals.

The court also cited the statute’s catchall clause—“or any other order within the court’s power”—as reinforcing the Legislature’s intent to grant broad remedial discretion to trial courts. The ruling aligns with interpretive doctrines emphasizing coherence, deterrence, and avoiding surplusage in statutory language.

By reversing the lower court and remanding for further proceedings, the appellate court stopped short of ordering disgorgement outright. Instead, it instructed the Chancery Division to determine whether disgorgement is appropriate on the current or expanded record—while cautioning against double recovery.

In a broader sense, the ruling is a testament to how statutory language, even in its most mundane form, is not just read but understood—with courts shaping that understanding to serve both justice and legislative design. It's a reminder, too, that in securities enforcement, punctuation and prepositions often matter as much as principles (or as much as principals, which is a corporate and finance pun that can be used here in this blog and should be used nowhere else).

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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