

THE
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Are Felonious Statements Under The General Corporation Law Actionable?

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Section 2254 of the California Corporations declares it a felony for a director, officer or agent of any corporation, whether domestic or foreign, to knowingly concur in making, publishing or posting either generally or privately to the shareholders or other persons any:

- written report, exhibit, statement of its affairs or pecuniary condition or notice containing any material statement which is false;
- untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures or prospects; or
- other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess.

Notably, this provision is included within the General Corporation Law and not the Corporate Securities Law. Although the statute clearly establishes criminal liability, it does not address whether shareholders or others may pursue a private right of action.

The one court that has squarely addressed the question concluded :

"Section 2254 makes no reference, either in the statute itself or in the statutory structure, of any intent to create a private right of action. In fact, the language of the statute itself refers to the violation as being felonious."

In re ZZZZ Best Sec. Litig., 1989 U.S. Dist. LEXIS 8083, *33, Fed. Sec. L. Rep. (CCH) P94,485.

Many older securities attorneys will remember the the famous rise and fall of wunderkind Barry Minkow who took his ZZZZ Best carpet cleaning business public based on phony disclosures and eventually went to prison. For those who don't remember the case, it is an excellent cautionary tale for lawyers and accountants performing due diligence. See [Minkow Empire : ZZZZ Best: the House of Cards Falls](#) (*Los Angeles Times* (Sept. 6, 1987).

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