

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-1027  
Summary Calendar

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

VERSUS

H. WAYNE HAYES, JR., ET AL.,

Defendants,

H. WAYNE HAYES, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(CA3-90-1054-T)

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(September 21, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Hayes appeals a default judgment entered against him as well as the district court's denial of his motion for summary judgment. We affirm.

I.

The Securities and Exchange Commission (SEC) filed a civil enforcement action seeking an injunction restraining future

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

violations and other relief against H. Wayne Hayes, Jr., and three other defendants for violations of securities laws.

In the complaint, the SEC alleged that beginning in 1985 Hayes made numerous misrepresentations to defraud investors in an oil and gas drilling program. In his answer, Hayes raised affirmative defenses, including statute of limitations, laches, and estoppel. The SEC responded with a motion to strike the affirmative defenses. Hayes responded to the SEC's motion. The district court, however, ruled in the SEC's favor and struck Hayes' affirmative defenses.

During discovery, the district court applied a series of orders and sanctions to attempt to force Hayes to cooperate with discovery and to comply with court orders. The district court subsequently decided that Hayes' pleadings should be stricken as an appropriate sanction. The district court then issued a default judgment against Hayes. The judgment permanently enjoined Hayes from violating the provisions of the securities laws charged in the complaint. The judgment also required Hayes to pay a disgorgement, prejudgment interest, and postjudgment interest. In addition, Hayes was ordered to submit a sworn accounting of his assets and to transfer assets to the registry of the district court in the amount of the judgment against him.

Hayes then filed a motion for summary judgment in which he contended that the case was barred by the statute of limitations. The SEC responded by arguing that Hayes' motion was untimely; that the limitations defense had already been ruled on; and that the limitations defense lacked merit. Without explanation, the

district court denied Hayes' motion for summary judgment. Hayes then prosecuted this appeal **pro se**.

II.

A.

Hayes' principal argument on appeal is that the district court abused its discretion in entering a default judgment against him.

The district court entered a default judgment against Hayes after he refused to appear for his deposition on a number of occasions after having been properly notified; after he failed to respond to interrogatories; after he failed to respond properly to requests for admissions; and after he failed to appear at court hearings, including a show cause hearing. The SEC also alleged that Hayes allowed documents to be destroyed.

Hayes offers a number of excuses on appeal to explain his conduct. He contends for example that he had conflicts between the show cause hearing and court ordered depositions; that he lived in the Bahamas and could not afford two trips to Dallas; that he did not attend the deposition because he did not have counsel and was concerned about "parallel prosecution" issues. Because Hayes raises these factual allegations for the first time on appeal, we do not consider them. **See Lewis v. Woods**, 848 F.2d 649, 654 (5th Cir. 1988).

Given Hayes' consistent refusal to cooperate with discovery and follow the court's orders, we are persuaded that the district court did not abuse its discretion in entering the default

judgment. **See SEC v. First Financial Group of Texas, Inc.**, 659  
F.2d 660, 664 (5th Cir. 1981); Fed. R. Civ. P. 37(b)(2)(C).

B.

Hayes next complains of the denial of summary judgment. But his motion for summary judgment was filed after the default judgment had been entered. The motion was untimely and a denial was proper.

C.

Hayes argues finally that the SEC has abused its subpoena authority by using subpoenas to fish for information regarding Hayes and his business activities. Hayes failed to move to quash the subpoenas or otherwise raise this complaint before the district court. We do not consider arguments raised for the first time on appeal.<sup>2</sup>

AFFIRMED.

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<sup>2</sup> Hayes also argues that his due process rights were violated because he had no access to a law library while he has been incarcerated in preparing this brief. Hayes did not raise this allegation before the district court and we decline to consider it.