

The Burger Court Opinion Writing Database

United States v. Naftalin

441 U.S. 768 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1979

Dear Bill:

Re: 78-561 U.S. v. Naftalin

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WB' or 'W. Brennan', written in a cursive, stylized manner.

Mr. Justice Brennan

cc: The Conference

10. The Chief Justice:
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Burger

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-561

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Appeals
Neil T. Naftalin. | for the Eighth Circuit.

[May —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case is whether § 17 (a)(1) of the Securities Act of 1933, 15 U. S. C. § 77q (a)(1), prohibits frauds against brokers as well as investors. We hold that it does.

Respondent, Neil Naftalin, was the president of a registered broker-dealer firm and a professional investor. Between July and August of 1969, Naftalin engaged in a fraudulent "short selling" scheme. He selected stocks that, in his judgment, had peaked in price and were entering into a period of market decline. He then placed with five brokers orders to sell shares of these stocks, although he did not own the shares he purported to sell. Gambling that the price of the securities would decline substantially before he was required to deliver them, respondent planned to make offsetting purchases through other brokers at lower prices. He intended to take as profit the difference between the price at which he sold and the price at which he covered. Respondent was aware, however, that had the brokers who executed his sell orders known that he did not own the securities, they either would not have accepted the orders, or would have required a margin deposit. He therefore falsely represented that he owned the shares he directed them to sell.¹

¹ A broker may mark an order to sell a customer's shares "long" if he

PP 1, 3, 5, 6, 7, 8, 10

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 11 MAY 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 9, 1979

Re: No. 78-561, United States v. Naftalin

Dear Bill,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 9, 1979

Re: No. 78-561 - United States v. Naftalin

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan
Copies to the Conference
cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1979

Re: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Re: 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1979

78-561 U.S. v. Naftalin

Dear Bill:

Please show on the next draft of your opinion that
I took no part in the consideration or decision of this case.

Sincerely,

Levin

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 11, 1979

Re: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS


May 9, 1979

RE: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference