

Rule of Law '1', Code is Law '0': Eisenberg Convicted in Mango Markets Criminal Trial after He Shies Away from Testifying

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In the fateful words of Assistant U.S. Attorney Thomas Burnett: *"Just because something is possible doesn't make it legal"*.^[1]

After an eight-day criminal trial in the U.S. District Court for the Southern District of New York, a unanimous jury convicted Avi Eisenberg of commodities fraud, commodities manipulation and wire fraud arising from his \$110 million attack on the digital asset exchange, Mango Markets.^[2]

By way of background, on October 11, 2022, Eisenberg "pumped up the price" of MNGO by making three very substantial perpetual futures trades between himself, which resulted in the MNGO price increasing by 1300% in 20 minutes. He then used the newly created collateral to exploit a feature in the exchange protocol that let him borrow \$110 million in various cryptocurrencies that he had no intention of repaying.^[3] In a surreal twist, Eisenberg then proposed a settlement and later voted in favor of a DAO governance vote whereby he would return \$67 million of his gains to the community (retaining the other \$47 million himself) in exchange for an agreement that the DAO would not pursue criminal prosecution or freezing of his funds.^[4]

Eisenberg was arrested by the FBI in San Juan, Puerto Rico on December 26, 2022, and was indicted, shortly thereafter.^[5] Eisenberg now faces up to 20 years in prison for wire fraud and 10 years on the other charges, with the final sentencing scheduled for July 29, 2024.^[6]

At trial, Eisenberg's defense claimed that his actions constituted a lawful trading strategy and asserted that the prosecutors would not be able to prove that the subject digital assets were commodities or that the transactions consisted of commodity swaps, challenging the basis of commodities fraud and commodities manipulation charges.^[7] This legal strategy aligned with prior statements made by Eisenberg, the self-described "applied game theorist", ^[8] after the attack. He famously crowed that it was "arbitrage" and a "highly profitable trading strategy". He also took the positions that he complied with the Decentralized Finance (DeFi) platform's rules and protocols in performing the trades and did not 'hack' the smart contracts making up the protocol, but rather took advantage of its weakness.^[9]

On the other side, the prosecutors portrayed Eisenberg's actions as classic fraud in a high-tech context as evidenced by U.S. attorney Tian Huang's opening statement: *"Consider this scam: a person sells a fake diamond ring—worthless plastic... The con man disappears and runs off. This case is a modern twist on that."*^[10]

Beyond proving that Eisenberg's actions constituted fraud, the prosecutors focused on proving Eisenberg himself knew it was fraud (knowledge or intent to defraud being a key element needed to prove the fraud charges). The U.S. Government entered into evidence Eisenberg's internet searches on topics like: "when market manipulation becomes a crime"; "security at airports"; "FBI Surveillance";

and “extradition rules from Israel” (which is where he travelled after completing his trades).[11] Eisenberg also used a false identity of a Ukrainian woman (having bought her login information) to perform the trades, allegedly to cover his tracks.[12] The U.S. Attorney further drove this point home in closing arguments: “*The more he pumped, the more he could steal... “It is clear as day the defendant knew”* he was committing crimes.[13]

Interestingly, after much anticipation, Eisenberg did not take the stand in his defence despite the central importance of the question of whether he knew his actions were deceitful and fraudulent at the time and constituted a crime. After roaring the case for arbitrage and the familiar defence of ‘Code is Law’ in online communities and a podcast after the exploit, the defence closed with a whimper without any such familiar battle cry from Eisenberg himself. While not at all uncommon in criminal cases, it was undeniably a letdown for many interested observers waiting for the debate to finally play out on the big stage, with a criminal trial in the Southern District of New York court, no less.

While Eisenberg’s criminal case is noteworthy as the first time a jury deliberated on whether exploitation of smart contract code for DeFi protocols constituted fraud and market manipulation, it remains to be seen what further developments in the ‘Code is Law’ defence theory will come in future civil proceedings. In particular, there are three outstanding civil actions against Eisenberg – brought by the United States Securities and Exchange Commission,[14] Commodity Futures Trading Commission,[15] and Mango Labs LLC[16] – all of which were stayed pending conclusion of the criminal trial. These authors are interested to see whether these civil actions proceed now that there is a criminal conviction and what more is to come in future cases debating the viability of a ‘Code is Law’ defence. The next chapter on civil recovery promises an even more telling stress test on the tenets of how DAO ecosystems should operate, as the courts will scrutinize the ‘settlement’ struck by Mango Labs (as voted by the governance tokens, including Eisenberg’s!), where the DAO ‘promised’ not to seek criminal charges against Eisenberg. While the trade transacted as Eisenberg planned, clearly the ‘settlement’ deal did not.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] David Voreacos, Chris Dolmetsch, “Crypto Trader Convicted in \$110 Million Mango Markets Fraud”, April 18, 2024: [online](#).

[2] Mango Markets is a Solana-based decentralized finance (DeFi) protocol providing borrowing, lending and other financial services through digital assets, including its native token (MNGO). Mango Markets is a member-owned community governed by the Mango DAO – a decentralized autonomous organization – where decision-making is executed by the voting of governance tokens through a blockchain.

[3] David Voreacos, Chris Dolmetsch, “Crypto Trader Convicted in \$110 Million Mango Markets Fraud”, April 18, 2024: [online](#).

[4] Jesse Coghlan, “Mango Markets exploiter said actions were ‘legal’, but were they?”, October 18, 2022: [online](#).

[5] Press Release Number 23-036: Alleged Perpetrator Of \$100 Million Crypto Market Manipulation Scheme To Make Initial Appearance In The Southern District of New York, United States Attorney’s Office South District of New York, Updated February 2, 2023: [online](#).

[6] Press Release U.S. Department of Justice, “Man Convicted for \$110M Cryptocurrency Scheme”, April 18, 2024: [online](#).

[7] Sander Lutz, “US Has No Authority to Prosecute DeFi Trades Says Lawyer for Mango Markets Hacker”, April 9 2024: [online](#) and

BSCN [@BSCN], X (formerly Twitter) Post re: Court Case Opens: Avraham Eisenberg Defense Claims Legit Trading Strategy: [online](#).

[8] David Voreacos, Chris Dolmetsch, "Crypto Trader Convicted in \$110 Million Mango Markets Fraud", April 18, 2024: [online](#).

[9] Nicholas Pongratz, "Mango Market Hacker Affirms He Isn't Sorry for Actions", October 28, 2022: [online](#).

[10] Sander Lutz, "US Has No Authority to Prosecute DeFi Trades Says Lawyer for Mango Markets Hacker", April 9 2024: [online](#).

[11] Brady Dale, "Prosecutors rest case in \$116M Mango Markets Fraud", April 12, 2024: [online](#).

[12] David Voreacos, Chris Dolmetsch, "Crypto Trader Convicted in \$110 Million Mango Markets Fraud", April 18, 2024: [online](#).

[13] David Voreacos, "Crypto Trader's \$110 Million Manipulation Trial Heads to Jury", April 17, 2024: [online](#).

[14] *United States Securities and Exchange Commission v Eisenberg*, 1:23-cv-00503-LGS, Filed January 20, 2023.

[15] *Commodity Futures Trading Commission v Eisenberg*, 1:23-cv-00173-LGS, Filed January 9, 2023.

[16] Order Granting Stay, *Mango Labs LLC v Avraham Eisenberg*, 23-cv-00665 (LJL), filed October 12, 2023: [online](#).

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