

# Mango Markets Guilty Conviction Overturned on Appeal – Take-aways for DeFi Users Everywhere

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The recent decision in *United States v. Avraham Eisenberg* is making waves in cryptocurrency circles, and highlights the evolving legal challenges posed by decentralized finance (DeFi) platforms.<sup>[1]</sup>

After a jury delivered a guilty verdict, Eisenberg appealed. On appeal, the U.S. District Court for the Southern District of New York vacated Eisenberg's convictions for (1) commodities-fraud; (2) commodities manipulation, and acquitted Eisenberg on the (3) wire fraud charge. For a full summary of the facts, view our blog post [here](#).

The vacated convictions were set aside on the basis that New York was not the proper venue since Eisenberg executed his trades from Puerto Rico, and the government failed to show a sufficient connection to New York. As for the wire fraud acquittal, the Court found that the automated nature of Mango Markets' smart contract meant that Eisenberg could not have made "false representations" to influence the contract and thereby cause the loss.

While media attention has focused on the fact that Eisenberg was acquitted of wire fraud, the other interesting aspects of the ruling lie in the court's treatment of (a) jurisdictional challenges posed by DeFi platforms and (b) the limits to how far required criminal fraud elements can be stretched when it comes to self-executing smart contract programs.

## **Jurisdiction as a Threshold Barrier to Enforcement of Alleged DeFi Frauds**

Given the number of crypto platforms that operate from offshore jurisdictions, the most significant take-away from the decision may not be about the wrongfulness of Eisenberg's conduct, but rather the finding that New York was not the correct place to prosecute the purported wrongful conduct.

The Court vacated Eisenberg's convictions for commodities fraud and manipulation on jurisdictional grounds, holding that the government had not established New York as the proper venue. The government attempted to ground jurisdiction based on two New York connections: (i) a third-party vendor providing trade related services operated in Manhattan, and (ii) a user of Mango Markets was located in New York. On appeal, the Court found this to be an insufficient basis for New York to be the proper venue.

Instead, the Court reasoned that New York was not the proper venue since Eisenberg executed the transactions from Puerto Rico, and neither he nor Mango Markets had any other meaningful connection to New York.

In cases involving DeFi platforms, where no central authority or geographic anchor exists, in the conventional sense, and where users can operate from anywhere in the world, this decision underscores the challenge of grounding jurisdiction and determining where proceedings ought to take place. Prosecutors or civil plaintiff lawyers need to carefully assess the digital and the 'IRL' connections to their preferred venue or jurisdiction and also consider disqualifying factors, and not assume that one forum's grounds for assuming

jurisdiction necessarily aligns with that of another. Courts that have routinely accepted jurisdiction despite having minimal connection to the subject matter of the case, even the lauded Southern District of New York, may not continue to act as the world's crypto fraud arbiter.

It bears noting that the strict approach to venue reflected in the Eisenberg decision may not have ended the same way in other jurisdictions with similar charges or causes of action. For instance, in Canada, courts have taken a more flexible and purposive approach to jurisdiction and have accepted jurisdiction over civil cases where a defendant's conduct causes harm within the domestic forum, even if the defendant did not themselves perform the act while residing within the domestic forum.

### **Smart Contracts and the Limits of Current Criminal Wire Fraud Statutes**

Although Eisenberg was acquitted of wire fraud, the ruling does not necessarily endorse the "code is law" mantra sometimes invoked in purist DeFi circles. The Court did not conclude that parties are legally entitled to do anything the code may permit. Instead, the Court focused narrowly on whether Eisenberg made a "material falsity" or false representation and found that, in the circumstances of Mango Markets' platform, the evidence fell short of a misrepresentation.

Because Mango Markets' smart contracts were permissionless, self-executing and automatic, the Court found, amongst other bases, that nothing Eisenberg said or represented about the value of his assets on the platform could have influenced the platform's decision-making. The platform automatically measured the value of Eisenberger's collateral, and without any rules, instructions, or prohibitions about borrowing on the platform, the Court held there was insufficient evidence of "falsity", a core element needed for a wire fraud conviction.

Importantly, while the Court's finding turned on the elements of wire fraud, it was not necessarily a blanket endorsement of Eisenberg's conduct.

Interestingly, the Court found that there was sufficient evidence to support the commodities manipulation and commodities fraud charges and highlighted that unlike wire fraud, a commodities fraud charge can be based on a "manipulative device", without the need for any false representation. This distinction mattered since the commodities manipulation and commodities fraud charges failed for lack of jurisdiction, not on the merits. Had the choice of venue been proper, it is possible the outcome could have been different.

### **Key Takeaways**

The decision highlights two intriguing considerations:

**First**, enforcement authorities and even civil plaintiff lawyers must grapple with the challenge of how to ground conduct in the digital medium within real world geography. As this result makes clear, jurisdiction cannot be cavalierly assumed from tenuous connections to a forum.

However, this strict approach to jurisdiction may not apply universally. Particularly in Ontario, courts have adopted a more purposive and effects-based approach to assuming jurisdiction. For example, where a plaintiff can demonstrate that harm from conduct was suffered in Ontario, courts are permitted to assume jurisdiction even where the underlying tortious conduct occurred elsewhere. The decision highlights the contrast between legal systems that demand closer ties between the alleged bad acts themselves and the jurisdiction in question, and those like Ontario that focus on a broader list of factors including whether harm was received within the domestic jurisdiction such that there is a sufficient "real and substantial connection" between the forum and the dispute.

**Second**, in the interests of protecting its users from unintended consequences, DeFi platforms may need to reconsider their smart contracts infrastructure and terms and conditions. The permissionless and automatic design of smart contracts unquestionably serve

the purpose of removing costly intermediaries and facilitating innovation and high-volume trades, but it also leaves the ecosystem vulnerable to manipulation, and often its victims without recourse (save for the occasional 'white hat' bounty hunter riding to the rescue). DeFi platforms may need to consider introducing new terms of use or dispute resolution frameworks to help balance the attractive, unencumbered DeFi trading freedoms with greater accountability and recourse for those users using it how it was intended.

***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] *United States v. Eisenberg*, 1:23-cr-00010-AS, (S.D.N.Y.), [online](#).

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