



BUSINESS

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Former Kmart head to settle SEC case for \$5.5M

Melissa Burden / The Detroit News

The former head of Kmart Corp. has agreed to pay \$5.5 million for misleading investors about the retailer's finances nearly a decade ago.

As part of a settlement, former Kmart CEO Charles Conaway also agreed to halt his appeal of a court-ordered financial penalty that he pay more than \$10 million.

"He wanted to put this behind him and get on with his life," Chicago attorney Scott Lassar said of client Conaway, who still lives in Michigan.



In 2005, the U.S. Securities and Exchange Commission filed a complaint against Conaway, alleging he and other executives made false statements in 2001, including during a November conference call with investors, which concealed the extent of the retailers' financial troubles.

Kmart filed for bankruptcy protection in January 2002.

On Wednesday, the U.S. Court of Appeals Sixth Circuit in Cincinnati agreed to send the case back to federal court in Detroit, so that court can decide whether to accept the proposed amended final judgment. Earlier this year, Conaway was ordered to pay more than \$10 million after a jury last year found him liable.

An appeals court case manager said Wednesday's order doesn't dispose of the case, but that if the Detroit court agrees to the settlement, then Conaway would voluntarily dismiss his appeal.

Kevin Callahan, a SEC spokesman, said the proposed settlement would "hold Charles Conaway accountable for his misconduct." He declined further comment.

The proposed amendment requires Conaway to pay \$3 million, stemming from part of a retention loan paid to him by Kmart in 2003, and a civil penalty of \$2.5 million. He will pay the \$5.5 million to the SEC within 14 days after the amended final judgment is entered.

Ken Dalto, a Farmington Hills retail analyst, called the settlement fair.

"It was a failing company, too much money was paid to him, and I think it's fair he's paying \$5.5 million," he said. "It's an enormous sum for anyone."

Conaway, who was fired shortly after Kmart filed bankruptcy, earned \$20 million during 20 months he worked with the company.

Kmart is now part of Sears Holdings Corp.

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