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Spotlight on Tenet's Former CEO

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While **Tenet** ([THC Quote](#) - [Cramer on THC](#) - [Stock Picks](#)) has paid a steep price for its past misconduct, the company's former leader -- who made more than \$110 million selling the company's once-highflying stock -- still awaits justice.

Tenet this week inked the last in a series of government settlements, this one with the **Securities and Exchange Commission**, spawned by its past billing practices. Two former Tenet executives settled securities charges as well, and another two remain under investigation.

But former CEO Jeffrey Barbakow wasn't even mentioned in the recent SEC settlement, leading some observers to speculate that the government could be preparing a court case against him.

"His name is conspicuously absent," notes Jeff Villwock, managing partner of Genesis Capital and a regular trader -- who takes both long and short positions -- in Tenet's stock. "The only explanation that I can think of is that there is some kind of criminal probe going on."

The SEC is limited to pursuing civil cases, Villwock says, so he hypothesizes that the agency could have shifted Barbakow's case to the [Justice Department](#) for a criminal investigation. He says no other explanation makes any sense.

The SEC didn't return a phone call from *TheStreet.com*, and Barbakow's attorney declined to comment for this story.

The SEC's own complaint against four other former Tenet execs suggests that Barbakow could be in trouble. Back in February 2002, the SEC claims, four former Tenet executives -- all targets of the SEC probe -- met with Barbakow for a discussion focused on the company's lucrative "outlier" payments from Medicare. The following month, the SEC says, former operating chief Dennis Mackey then presented details about the company's outlier payments "at a dinner attended by most of Tenet's board members and various senior officers" of the company.

Villwock, for one, finds it hard to believe that Barbakow had no clue what was going on.

"He didn't know anything?" Villwock laughs. "Give me a break."

In essence, however, Barbakow has claimed as much in the past. First, in a [conference call](#) held in November of 2002, Barbakow indicated that he had no detailed information about Tenet's outlier payments -- the subject of a UBS analyst report that had sent the company's stock plunging -- and doubted that it would prove material once he obtained it. Even a week later, when announcing a big management shakeup over the outlier issue, Barbakow continued to act clueless.

"Some of you asked if I'm comfortable with the certification I delivered in connection with our most recent Form 10-Q," Barbakow stated at the time. "The answer is: 'Yes, I am.'"

But investors, sending Tenet's stock below \$20 a share for the first time in years, clearly doubted his word.

"The hostility, I think, on this call is well-justified," said Bear Stearns analyst Bob Wright. "I feel like I've been lied to by the management. ... How did [UBS analyst Kenneth] Weakley know this and you guys didn't? That's what I don't get."

Barbakow and former general counsel Christi Sulzbach acted as if they had just uncovered the information themselves. But in fact, the SEC claims, Sulzbach had stored away plenty of outlier data in a secret "binder" months earlier. Both Barbakow and Sulzbach, together with former executives named in the SEC complaint, got so-called Wells Notices signaling likely SEC enforcement action back in 2005.

Since then, Barbakow and his former operating chief have paid a combined \$1.5 million to settle [class](#) action securities lawsuits pending against them. But the SEC has yet to slap Barbakow with any penalties itself.

"Jeff's already written a check," Villwock says. "So in some respects, he's already admitted culpability.

"Maybe, this time, they're actually going to hold a CEO responsible."

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