US Supreme Court dismisses challenge to ruling undermining insider trading prosecutions

Gabriel Black
13 October 2015

On October 5, the US Supreme Court dismissed an appeal of a lower court ruling that overturned the insider trading convictions of two hedge fund managers. The Supreme Court's action affirms a novel interpretation of federal statues that imposes a much higher burden of proof for prosecutors seeking convictions for insider trading.

The ruling upheld by the Supreme Court, handed down last December by the US Court of Appeals for the Second Circuit, requires prosecutors to demonstrate that the informant in an insider trading case received "concrete material gain" from sharing market secrets. Previously, prosecutors were required to demonstrate that the informant had benefited from the transaction, but the courts accepted a broader range of gains such as IOUs and the strengthening of personal relationships.

The December ruling overturned the convictions of Anthony Chiasson, founder of Level Global Investors, and Todd Newmann, a former trader at Diamondback Capital Management. They had received prison sentences of six-and-a-half years and four-and-a-half years, respectively. They were found to have made $72 million in profits by soliciting insider information about technology firms Dell and Nvidia.

In the wake of the December ruling, the Obama Justice Department dropped charges against several defendants it had accused of trading on insider information, including some who had pleaded guilty. The department said prosecutors could not prove allegations under the new legal framework.

Previously, a federal judge had handed down a three-and-a-half-year prison sentence against Michael Steinberg, an SAC Capital portfolio manager who was convicted on insider trading charges. Steinberg is a close associate of the multibillionaire manager of the SAC hedge fund, Steven A. Cohen.

In 2013, the Justice Department arranged a settlement with SAC and Cohen under which the firm pleaded guilty and paid $1.2 billion in penalties for operating what prosecutors called insider trading "on a scale without known precedent." No charges were brought against Cohen himself, who was allowed to keep the vast bulk of his $9 billion-plus fortune.

After last week's Supreme Court ruling, one of Steinberg's lawyers said his client's conviction "will be thrown out as well."

Following last December's ruling by the US Court of Appeals for the Second Circuit, the US attorney for Manhattan argued that the new legal standard would "dramatically limit the government's ability to prosecute some of the most common culpable and market-threatening forms of insider trading."

John Zack, a former Federal prosecutor who worked on the Chiasson-Newman case, said the Supreme Court's dismissal of the prosecutor's appeal "cements… changes to the landscape of insider trading law."

The Supreme Court's ruling must be placed in context. While multimillionaires who have cheated other investors out of tens of millions of dollars through the buying and selling of corporate secrets walk free, hundreds of thousands of Americans are serving prison time for petty crimes such as shoplifting and drug possession. In 2013, 3,281 prisoners were serving life sentences in American prisons, with no chance of parole, for non-violent crimes.

The *Guardian* notes that one such individual is Timothy Jackson, who received a life sentence for shoplifting a $159 jacket from a department store in

New Orleans.

Insider trading is “ubiquitous” in the hedge fund industry, according to ex-SAC trader Donald Longueuil. The Supreme Court action effectively provides legal immunity for criminal actions that have become routine on Wall Street.