

Litigators of the Week: A Major Defense Win in Insider Trading Case

By **Ross Todd**

February 3, 2017

Going into trial last month defending former J.P. Morgan Securities LLC analyst Ashish Aggarwal on insider trading charges, Goodwin partners Grant Fondo and Derek Cohen had a couple of things going for them.

Although Aggarwal was accused of providing tips about upcoming acquisitions he learned about in his job, the Goodwin pair had won a ruling from U.S. District Judge Terry Hatter Jr. severing Aggarwal's case from codefendants he allegedly tipped off who made more than \$600,000 profit trading in complex securities trades prior to the announcement of the deals.

The Goodwin lawyers also successfully fought a stay in a companion civil case brought by the U.S. Securities and Exchange Commission, which allowed them the rare opportunity to depose government witnesses before the criminal insider trading trial.



Derek Cohen, left, and Grant Fondo, right, of Goodwin.

Courtesy photos

The pair's win streak for Aggarwal continued Tuesday as a Los Angeles federal jury found their client not guilty on 26 of 30 counts after seven days of trial and three days of deliberations.

One of the first cases to go to trial since the Supreme Court lowered the bar for prosecutors in insider trading cases last year, the case would seem to have set up well for the government. Last December, in *Salman v. United States*, the High Court found that tippers don't have to get a tangible benefit from providing a tip in order to be convicted of insider trading.

But Aggarwal's case proved how difficult it can be for prosecutors to persuade jurors in cases where they can't point to cash coming a tip-pers way. Although they accused Aggarwal of passing along insider information to his former UC-Berkeley classmate Shahriyar Bolandian, they could only point to trading accounts held by Bolandian and another alleged co-conspirator when making their case. Fondo said that the pretrial win to sever Aggarwal's case "allowed the jury to focus on Mr. Aggarwal and the evidence as it pertained to him." Indeed, under cross-examination from Cohen, the lead FBI agent on the case was forced to concede that of not a single one of the 80 financial exhibits put into evidence by the government related to an account held by Aggarwal.

Thanks to the depositions the Goodwin lawyers were able to take of Aggarwal's analyst colleagues at JPMorgan because of the team's other pretrial win, the Goodwin team could also point to others at the company besides Aggarwal who had gossiped about what they were working on and were careless in handling sensitive information. "We knew going in from having deposed all the analysts that all of them had

to acknowledge they had violated JPMorgan policy," Cohen said. With those admissions in hand, Cohen and Fondo could paint Aggarwal's loose talk with his friend as something less than criminal.

"[T]hese are mistakes young people made at their first real job, not federal crimes," Cohen said in his opening statement. "Carelessness is not a crime. Being taken advantage of by a friend is not a crime." he said.

Fondo returned to that theme again in his closing argument.

"Did Ash violate company policy? Yeah. Should he probably not have been doing it? Maybe," Fondo said. But Fondo continued "that is a very different thing than violating the law."

A spokesman for the Los Angeles U.S. Attorney's Office, which tried the case alongside prosecutors from the fraud section of DOJ's Criminal Division, said prosecutors were "considering their options" on the four charges on which the jury hung. They're expected to announce their decision at a status conference in the case set for Monday.

Contact Ross Todd at rtodd@alm.com.