

Securities Regulation Daily Wrap Up, ALTERNATIVE INVESTMENT FUNDS—S.D.N.Y.: Level Global founder sues Manhattan U.S. Attorney, FBI agents, over investigative tactics, (Mar. 3, 2015)

By Mark S. Nelson, J.D.

A new battle looms for Manhattan U.S. Attorney Preet Bharara as the Second Circuit mulls if it or one of its panels will roll back the limits the court's *Newman* opinion imposed on remote tippee-based insider trading prosecutions last year. Bharara is already in a pitched battle to get the appeals court to rehear *Newman*, which pits a decades-old line of Supreme Court precedents against Bharara's theory of tippee liability. But a recently unsealed law suit filed by David Ganek, who co-founded a hedge fund with a key *Newman* figure, also seeks compensation for what Ganek says were the cavalier investigative tactics used by the U.S. Attorney's Office (USAO) and the Federal Bureau of Investigation (FBI) that ultimately forced him and his hedge fund out of business ([Ganek v. Leibowitz](#), February 26, 2015).

Lights-out at Level Global. Ganek's complaint gets right to the point: "This is a case about the government fabricating evidence and...destroying a business." Ganek co-founded the hedge fund Level Global Investors (LGI) in 2003 along with Anthony Chiasson, a defendant in the *Newman* case. But one of Ganek's key points is that he was the "principal partner" and the "public face" of LGI, not Chiasson.

LGI was an investment adviser that managed hedge funds. Its aim was to achieve what Ganek described as a "true hedge" while avoiding other aspects of the then-popular long-short strategy pursued by many hedge funds. LGI had consistent nine percent annual returns from its inception, and it only suffered what Ganek called "modest losses" when global markets cratered in 2008. In 2010, a passive, minority investor paid enough to imply LGI had a valuation of at least \$400 million. LGI had \$4 billion in assets under management then, and it expected a future investor to put in \$500 million.

But then the USAO began its crack-down on insider trading, including by taking a look at a former LGI market researcher, Spyridon ("Sam") Adondakis, who investigators said in a once-sealed affidavit in support of a search warrant told them he gave Ganek inside information and

he also told Ganek the information came from an improper source. Ganek cites other statements by Adondakis and investigators that Adondakis said the opposite, and thus never implicated Ganek in insider trading. According to Ganek, LGI had robust compliance systems and ethics codes. His suit notes that Adondakis allegedly was told to leave LGI after he violated LGI policy.

Ganek's suit also recalls that *The Wall Street Journal* had been tipped by someone about the raid and covered it in detail. At one point, Ganek said his attorney, a former prosecutor in the Manhattan USAO, asked Bharara to back off LGI, but Bharara allegedly backed up investigators. Meanwhile, Ganek failed to reassure LGI's investors and he had to shutter the fund in 2011, leaving 60 people out of work.

Ganek's suit emphasizes the USAO's and FBI's recent use in insider trading cases of investigative methods once reserved for violent felony and organized crime cases. Ganek said an external review he commissioned prior to the raid on LGI had exonerated him, and he notes that he has not been charged with any crime by the Department of Justice, nor has he been civilly charged by the SEC.

Under color of law. According to Ganek, lawyers for the USAO and agents at the FBI acted under color of federal law to unlawfully upended LGI. The suit names five persons at the USAO, including Bharara, eight FBI agents at the bureau's New York field office, and two members of the USAO's Securities and Commodities Fraud Task Force (the task force also included two of the named assistant U.S. attorneys).

The first of four counts alleges that several assistant U.S. attorneys and FBI agents violated Ganek's Fifth Amendment due process rights by fabricating their characterization of Adondakis' statement about Ganek to them in order to get a warrant to raid LGI's offices. Ganek claims that Adondakis never implicated him to investigators. Count two alleges unreasonable search and seizure in violation of the Fourth Amendment against the same defendants.

The third and fourth counts each allege that nine persons, including Bharara, whose duty it was to supervise the investigation of LGI and Ganek, failed to shut down the probe when they learned the evidence did not support further action. Ganek claims these supervisors acted either intentionally or recklessly or with deliberate indifference to his constitutional rights.

Ganek seeks compensatory and punitive damages, including \$400 million for loss of business, as set by the valuation of the minority investor stake in LGI just over half a year before the raid.

The suit also asks for the costs of winding-up LGI, loss of future income, and loss of business reputation and related opportunities. Ganek said he wants a jury trial.

The case is [No. 15-cv-1446](#).

Attorneys: Nick J. Brustin (Neufeld Scheck & Brustin, LLP) for David Ganek.

Companies: Level Global Investors

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