Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—S.D.N.Y.: *Newman's* 'personal benefit' tweak will not shake solid insider trading verdict, (Mar. 4, 2015)

By Amy Leisinger, J.D.

The Southern District of New York denied a defendant's motion for a judgment of acquittal or, in the alternative, for a new trial on counts of securities fraud and conspiracy in connection with an insider trading scheme. The court found that, at trial, the government provided substantial evidence showing that David Riley provided material, nonpublic information to Matthew Teeple, a hedge fund analyst, concerning his employer's sales data and an unannounced impending acquisition. According to the court, "[a]lthough the [c]ourt's instructions to the jury would have been different following *Newman*, the evidence adduced at trial left no reasonable doubt of Riley's guilt" (*U.S. v. Riley*, March 3, 2015, Caproni, V.).

Background. Riley was the CIO at Foundry Networks, Inc. (Foundry), a network equipment company and, by virtue of his position, was privy to worldwide sales and other company information. From at least 2007 through 2009, Teeple would frequently travel to meet with Riley, among other Foundry employees, and Riley knew that Teeple advised hedge and mutual funds as an analyst for Artis Capital Management, LP (Artis). When Teeple received and conveyed information from Riley concerning a planned acquisition of Foundry to Artis and others, they acquired larger positions in Foundry, and Foundry's share price rose dramatically following the public announcement of the acquisition. When the acquiring company had trouble securing financing, Riley spoke to Teeple prior to the public announcement, and Artis sold Foundry's securities short, avoiding significant losses.

Riley was convicted of two counts of securities fraud and one count of conspiracy to commit securities fraud in connection with his role in the insider trading scheme.

Motion for new trial. In his motion for a new trial, the defendant argued that the court's "personal benefit" instruction was plain error in light of the Second Circuit's holding in *U.S. v. Newman*. According to Riley, the court permitted the jury to find that he had obtained a personal benefit in exchange for the information if he provided it for the purpose of "maintaining or furthering a friendship," In *Newman*, he stated, the court narrowed the definition of "personal benefit" to exclude "the mere fact of a friendship" without additional "proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature." This change in law should result in a new trial, the defendant argued.

The court rejected this contention, noting that the defendant failed to show any "plain" error and that *Newman* acknowledged that a tipper has received a personal benefit when there is "'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the latter.'" Riley obtained help with a side business and his career from Teeple, the court reasoned, and Teeple also provided him with investment advice. Even if none of these standing alone is sufficient, the court found, the totality of the circumstances demonstrates that Riley provided Teeple with material, nonpublic information in anticipation of a personal benefit. A jury could have found, beyond a reasonable doubt, that Riley obtained a personal benefit from providing the information, the court stated.

The court also rejected the defendant's arguments that the court's response to a jury note regarding motive was inappropriate and that prejudicial testimony and evidentiary errors deprived him of a fair trial. Any potential error did not affect the overall fairness of the trial or unduly prejudice Riley, the court concluded, and the defendant's motion for a new trial was denied.

Motion for acquittal. The defendant also moved for a judgment notwithstanding the verdict, maintaining that there was insufficient evidence for a reasonable jury to conclude that he had access to, and knew that he was passing on, material, nonpublic information; that he obtained a personal benefit from his actions; and that a conspiracy existed. The court found these contentions meritless, noting that there was more than sufficient evidence to support the jury's conclusion that Riley had access to material, nonpublic information regarding

Foundry's sales figures and the impending acquisition. There was also ample evidence suggesting that, during their meetings, Riley conveyed information to Teeple with the knowledge that Teeple would trade based on the information and that he did so in anticipation of receiving a personal benefit in the form of career assistance and investment advice, according to the court. Further, Riley was an active participant in an insider trading scheme, the court stated, and this is sufficient evidence from which to infer membership in a conspiracy. A court must "'resolve all inferences from the evidence and issues of credibility in favor of the verdict,'" the court explained, and, as such, the defendant's motion must be denied.

The case is No. 13-CR-339-1 (VEC).

Attorneys: Anthony Cecutti (Romano & Kuan, PLLC) and John Francis Kaley (Doar Rieck Kaley & Mack) for David Riley. Michael Patrick Holland, Securities and Exchange Commission, and Sarah Eddy McCallum, U.S. Attorney's Office, for the United States.

Companies: Artis Capital Management, LP; Foundry Networks, Inc.

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