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Crime

Prosecutors Didn't Have Strong Case Against Younger Rajaratnam, Lawyers Say

The recent acquittal of Rengan Rajaratnam on insider-trading conspiracy charges demonstrates the importance of bringing a strong case based on solid evidence, lawyers commenting on the verdict told Bloomberg BNA.

They also suggested that the prosecution may have erred by introducing evidence that focused on the misconduct of the defendant's older brother, convicted fraudster Raj Rajaratnam, who currently is serving an 11-year sentence for insider trading.

Nonetheless, while the prosecution in this case was unsuccessful, attorneys credited U.S. Attorney Preet Bharara's almost unbroken string of victories in the hedge-fund insider-trading arena. They say his overall mission has changed—for the better—the way business is conducted on Wall Street.

Not Guilty. On July 8, the younger Rajaratnam became the first to escape conviction of almost 90 defendants charged in a federal crackdown on hedge fund insider trading (46 SRLR 1331, 7/14/14).

After less than four hours of deliberation, a jury in the U.S. District Court for the Southern District of New York found the defendant not guilty of conspiring with his older brother to commit insider trading in 2008.

**“The bigger picture is that the U.S. Attorney's
Office is concerned with justice, as it should be.”**

RITA GLAVIN, SEWARD KISSEL LLP

During the trial, prosecutors argued that wiretapped phone conversations between the two brothers showed that Rengan schemed to obtain unlawful tips using

Raj's Rolodex of insiders. However, Rengan's lawyer, Daniel Gitner, Lankler Siffert & Wohl LLP, said the government failed to prove its case and charged his client based only on evidence gathered against his older brother.

Rare Occurrence. From all accounts, the Rengan prosecution was one of Bharara's weakest cases, H. David Kotz, Berkeley Research Group LLC, told Bloomberg BNA. He said the court's dismissal of two securities fraud counts only days before the trial concluded was a “rare occurrence and did not bode well for the strength of the case.”

Meanwhile, New York lawyer Rita Glavin, Seward Kissel LLP, noted that Rengan was indicted as the statute of limitations was about to expire, suggesting that the U.S. Attorney's Office probably wanted to gather more evidence.

“I think the fact that they waited as long as they did indicates that this was not the strongest case,” Glavin said. “There must have been internal debate.”

“This was an aggressive indictment based on the evidence they had.”

Concurring, Washington lawyer Stephen Crimmins, K&L Gates LLP, said the prosecution's loss “underscores the importance of good case selection, particularly in insider trading cases.”

“In particular,” he told Bloomberg BNA, “this loss shows the importance of not stretching too far by adding peripheral defendants to what is otherwise a litigable case.”

Similarly, Denver lawyer Michael MacPhail, Faegre Baker Daniels LLP, commented that the prosecution “appears to have overreached by bringing criminal charges against a sympathetic defendant based on relatively weak evidence.”

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More specifically, Kotz suggested that one of the flaws of the case was that the prosecution's testimony and evidence primarily involved Rengan's brother Raj, whom the jury saw as more culpable than the defendant.

"Prosecutors generally need to identify one bad actor to a jury," Kotz, a former Securities and Exchange Commission inspector general, remarked. "When, as in this case, the defendant is seen as a minor player compared to another bad actor, a jury is reluctant to prosecute."

"The government could not paint the defendant himself as an insider trader who made a fortune at the expense of other traders," Crimmins said. "All the government could do was argue that the defendant helped his older brother. The jury was plainly not willing to sentence the defendant to years behind bars based on this thin a showing."

New York lawyer Greg Morvillo, Morvillo LLP, declined to speculate on the jury's thinking. "What we do know is that the jury did not find the evidence compelling enough to convict," he told Bloomberg BNA.

"If the jury was not convinced of Mr. Rajaratnam's guilt beyond a reasonable doubt, then the system worked like it was supposed to in this case."

Wiretap Evidence. Much of the government's case was based on wiretapped telephone conversations between Raj and Rengan—a controversial strategy that netted guilty verdicts against the older Rajaratnam brother. In this case, however, the wiretaps proved unpersuasive.

From what she has read about the case, Glavin said, "there wasn't much there."

"The government argued that the conversations were nefarious, the defense argued they were completely harmless industry-speak."

"There's not a kilo of cocaine in the room. There's no gun or dead body. You don't start from the premise that we all know there was a crime committed and all you have to figure out is who did it." Rather, according to Glavin, "the predicate inquiry is 'Was there a crime?'"

The initial cases in the hedge-fund insider-trading sweep were relatively straightforward, she continued. "There were insiders on wiretaps. There were direct tipper-tippee relationships with money exchanged and benefits discussed between them."

Recent cases, however, have stretched that. "The Southern District of New York is trying to push the boundaries of criminality," Glavin said.

First Loss. How will the trial loss impact Bharara and his now broken streak of successful insider trading prosecutions? According to Kotz, "Bharara's conviction rate has been so impressive, one loss should not have a significant impact on his overall efforts or reputation."

"They're going to bring the cases they think need to be brought," Morvillo concurred. "They are not going to win every case, that's just a fact of life. It's not to say many of the other cases they brought in this investigation aren't legitimate cases. It doesn't call into question the work the assistants did on those cases. This one, however, they happened to lose."

Glavin strongly agreed. While nobody likes to lose, "it's one acquittal after many incredibly successful investigations."

In reality, she said, Bharara's efforts overall have changed the way people do business on Wall Street.

"People are paying attention on Wall Street about sources of information. Funds and financial institutions have upped their compliance and training programs."

"The bigger picture is that the U.S. Attorney's Office is concerned with justice, as it should be," Glavin said.

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