

White Collar Group Of The Year: Shearman & Sterling

By **Stewart Bishop**

Law360, New York (February 2, 2016, 9:16 PM ET) -- Shearman & Sterling LLP's white collar attorneys last year scored a complete victory on behalf of a former hedge fund manager in the landmark Newman insider trading case and secured a favorable settlement for a Bank of New York Mellon Corp. executive accused of currency trading violations, earning the firm a spot among Law360's 2015 White Collar Groups of the Year.



Attorneys from the firm conducted a zealous defense of former Diamondback Capital Management LLC manager Todd Newman in one of the most closely watched white collar cases in recent years, capped off when the U.S. Supreme Court opted not to review the case.

The high court's decision cemented a finding of the Second Circuit, which reversed the convictions and threw out the indictments of Newman and another former hedge fund manager who both faced years in prison, and raised the bar for insider trading prosecutions of individuals who are one or more steps removed from sources of confidential information.

Shearman & Sterling attorneys faced a formidable opponent in Manhattan U.S. Attorney Preet Bharara, whose office at the time boasted an impressive streak of dozens of insider trading convictions, either by plea or by trial.

Partner Stephen Fishbein, one of the leaders of the team defending Newman, acknowledged the challenging task of taking on the case but said he knew they had a solid legal case to make.

"On the one hand it was kind of daunting that they had this extraordinarily successful initiative where they were getting conviction after conviction," Fishbein told Law360. "At the same time, we felt the principal legal issue we were pushing, which was whether the tippee had to know about the personal benefit that was obtained by the tipper, I thought that was a good legal issue. And frankly I was pretty confident in the legal analysis."

Newman and former Level Global Investors LP manager Anthony Chiasson were convicted in 2012 and sentenced to 4½ and 6½ years in prison, respectively, on charges they illegally traded Dell Inc. and Nvidia Corp. stock based on tips originating from industry insiders.

But on appeal, Fishbein and the Shearman & Sterling team argued the government should have been required to prove that his client knew the insiders had received a personal benefit in exchange for the tips.

Fishbein said that during oral argument on the merits, the Second Circuit panel was sympathetic with the defense position and quite hostile to the government's stance, so Newman's legal team knew they had a solid chance of getting a reversal. The complete vindication for Newman, however, definitely caught some people off-guard.

"I think most people felt that they're going to reverse, but they're going to send it back for a new trial. I think it was not contemplated by a lot of people that they would actually find that the evidence was insufficient and therefore enter an acquittal," he said. "That was quite a surprise to everybody."

The Newman case has had a wide ripple effect. It has threatened to upend numerous convictions of others accused of the crime, and set the stage for other circuits to weigh in on the contentious standard.

While the case did have a big effect in the insider trading world, Fishbein said Shearman & Sterling's center of attention has always been on Newman himself, the client who was subjected to an incredibly difficult, years-long ordeal to clear his name.

"There's a certain amount of gratification to being part of a case that makes law or has a particular impact, but frankly the focus is on the particular client," Fishbein said.

Shearman & Sterling's white collar chops were also on display last year in its representation of David Nichols, a Bank of New York Mellon executive charged with violating the Financial Institutions Reform Recovery and Enforcement Act by overcharging clients for trading currencies.

After more than a year of litigation, the firm secured a deal for Nichols in which he paid no financial penalty nor made any admission about committing mail or wire fraud.

Shearman & Sterling has also continued to be a go-to shop for financial institutions. The firm has been tapped by Citigroup to lead multiple internal investigations related to its Mexican unit, and is the counsel of choice for heavyweights like Bank of America Corp., Nomura Holdings Inc. and BNP Paribas in benchmark class actions and investigations that have swept the industry in recent years.

Adam Hakki, the global head of Shearman & Sterling's litigation group, said white collar is one of the largest areas of the firm's litigation practice, and the firm has white collar attorneys in every jurisdiction where it litigates, including Washington, D.C., New York, San Francisco, London and Hong Kong.

The firm takes on a broad spectrum of white collar work, from traditional matters such as insider trading and Securities and Exchange Commission-related matters, to criminal antitrust proceedings in the U.S. and Europe, Foreign Corrupt Practices Act and anti-corruption work, as well as general international investigations and economic sanction cases.

Hakki championed the global scale of the firm's white collar capabilities, noting that as more and more investigations and cases have taken on international and cross-border aspects, the fact that Shearman & Sterling has litigators experienced in a lot of jurisdictions has been a major asset.

"I would also point to our industry and product expertise, particularly with respect to financial institutions, securities, trading and cartel matters," Hakki said. "We have a lot of specialized both business knowledge as well as technical area legal knowledge that I think is particularly strong."

And of course there's the white collar attorneys themselves, Hakki said.

"We've got a really good team of well-regarded former government lawyers who are really strong trial lawyers and we've got a lot of good young white collar lawyers, which I think bodes well for the future," he said.

--Editing by Brian Baresch.

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