

The Acquittal Of Rengan Rajaratnum: A Precursor For Acquittals Or No Action In Other “Remote Tippee” Cases?

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The recent acquittal in the trial of Rengan Rajaratnum may be a harbinger of good tidings for future insider trading defendants. A key issue in some recent insider trading prosecutions, including this one, is whether the government is required to prove that the defendant/tippee (who received the tip) knew about the benefits provided to the tipper (who provided the tip). In a traditional insider trading case, this knowledge requirement is typically not difficult to prove because the defendant usually directly provided the insider with the benefit. But in some recent stock-tipping cases, prosecutors have pursued “remote tippees:” individuals that received a tip but have at least one layer between them and the insider. The question of whether the knowledge requirement should be applied to “remote tippees” is an unresolved issue. Federal district courts in the Second Circuit are split on the issue and are looking to the Second Circuit to decide it, which the Second Circuit likely will when it renders its decision in the Chiasson appeal (see below). The more courts apply the knowledge requirement to the “remote tippee” fact pattern, the more difficult it will be for the government to obtain a conviction or even bring a case against a remote tippee, as illustrated by the acquittal of Rengan Rajaratnum. Mr. Rajaratnum, a former Galleon Group LLC manager, was prosecuted for his alleged role in a criminal insider trading conspiracy with his brother Raj Rajaratnum. Raj, the founder of Galleon, was previously convicted in 2011 for insider trading. In advance of trial, the prosecutors agreed they would be required to prove Mr. Rajaratnum’s knowledge of the benefits his brother provided to insiders. Presumably, the prosecutors were confident they could prove Mr. Rajaratnum’s knowledge. But, in making this bet, prosecutors eliminated a likely point of appeal: the question of whether the prosecution was even required to prove that Mr. Rajaratnum knew of the benefits provided. The prosecution’s two star witnesses, Rajiv Goel, a former Intel Corp. executive, and Anil Kumar, a former McKinsey & Co. Inc. director, both testified that they never told Mr. Rajaratnum about the benefits his brother had provided them. Without a clear smoking gun (e.g. “I told Rengan his brother bought me a car in exchange for the tip”), it is difficult for the prosecution to prove that a remote tippee knew of the benefit provided to the insider. Indeed, in comments to the press, a juror pointed to the lack of a smoking gun as a reason for acquittal. The prosecution’s decision in the Rengan Rajaratnum trial not to contest the instruction that a remote tippee is required to have knowledge of the benefits provided might ultimately be moot.

A potentially significant decision on this issue is expected any day from the Second Circuit on an appeal from Todd Newman and Anthony Chiasson. Chiasson and Newman were both found guilty of insider trading in late 2012. In their trial, the district court judge instructed the jury that they did not have to find that Chiasson or Newman knew of any benefit given to the source of the information in order to convict them. Newman was 2 layers from the source, and Chiasson was 4 layers from the source. The jury found Chiasson and Newman guilty, and they appealed. At the oral argument on their appeal earlier this year, the Second Circuit panel appeared skeptical of the jury

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instructions and hinted they may overturn Chiasson's and Newman's convictions. If the Second Circuit does reverse the convictions, the decision will likely reverberate across many pending and past cases, given the plethora of insider trading cases brought in the Second Circuit and the deference often afforded to Second Circuit precedent in this area. As shown by Rengan Rajaratnum's acquittal, a reversal by the Second Circuit may circumscribe current and future SEC prosecutions against remote tippees.