[Bond Case Briefs]

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[Bid-Riggers Lose Appeal in Potentially Far-Reaching Ruling.]

WASHINGTON — A federal appeals court denied the appeals of a trio of convicted bid-riggers in a ruling that could have lasting effects for future fraudsters, according to a securities litigation lawyer.

The U.S. Court of Appeals for the Second Circuit in lower Manhattan issued an opinion on Thursday dismissing the arguments of former UBS AG bankers Peter Ghavami, Michael Welty and Gary Heinz.

The three men were seeking to have their convictions overturned after a district court jury found them guilty in August 2012 for participating in a far-reaching scheme to manipulate bids for guaranteed investment contracts and other municipal products between 2001 and 2006. The Justice Department had filed fraud and conspiracy charges against them.

The foundation of the defendants' arguments was that the government took too long to indict them because the five-year statute of limitations for wire fraud had expired before they were brought up on charges. Former General Electric bankers Steven Goldberg, Dominick Carollo and Peter Grimm, convicted as part of the same investigation, won their appeals on those grounds in December 2013.

But the government took a different avenue with the Ghavami defendants and alleged that the fraud affected a financial institution, triggering a 10-year rather than five-year, statute of limitations. The defendants tried to have the charges thrown out by the district court, but the court allowed the case to go forward.

Lawyers for the convicted men argued that the conspiracy affected municipal issuers, not banks, and that the banks, including UBS, were "active participants in the fraud." Further, they argued, the costs, fines, and legal fees incurred by the banks during as a result of the fraud are not the kind of harm the law contemplates. Justice Department lawyers countered that the men exposed their employers and the employers of their co-conspirators to criminal sanctions and said that the men even conceded that their crimes affected UBS in order to prevent the government from presenting evidence to that effect at trial.

The Second Circuit opinion, issued in the name of the court rather than by the individual judges who heard the case, noted that UBS and other financial institutions involved admitted responsibility for the crimes and agreed to pay more than $500 million in fines and restitution to municipalities.

"As a result, the banks incurred significant payments and related fees, which were foreseeable to the defendants at the time of their fraudulent activity," the court said in its opinion. "The role of the banks as co?conspirators in the criminal conduct does not break the necessary link between the underlying fraud and the financial loss suffered."

The court issued its opinion unusually quickly — in less than three weeks. The three-judge panel heard oral arguments just last month, and appellate court decisions often take 60 days or more.

"The cursory fashion in which the Second Circuit rejected the appeal reflects its view that the longer, ten-year limitations period applied," said Anthony Sabino, a white-collar defense attorney in

Mineola, N.Y., and a St. John’s University law professor. “Clearly, the higher court gave no credence to the defendants on that argument.”

Sabino said the court’s decision could have serious implications for those charged with financial frauds in the future.

“Its far greater significance is to the financial community,” he said. “Based upon this ruling, if you transmit anything fraudulent that has anything more than a trivial effect upon a bank and its business, you are subject to a statute of limitations more than twice the norm. That’s a pretty powerful weapon to use against the bad guys in the financial world.”

Ghavami received an 18-month prison sentence and a $1 million fine last July; Heinz got 27 months and a $400,000 fine; and Welty received 16 months and a $300,000 fine. Nearly all of the other bid-riggers escaped with light sentences.

Goldberg, Carollo and Grimm are free after their successful appeal and most of the other men indicted escaped significant punishment. Former UBS banker Mark Zaino became a cooperating witness for the government and received no prison sentence or fine when sentenced last year.

Former CDR Financial Products, Inc. employees Douglas Goldberg and Daniel Naeh were not given any prison time or probation when sentenced last year. CDR founder David Rubin escaped jail but was ordered to pay more than $2 million in restitution and millions more in fines for both himself and the firm. Former Bank of America executive Douglas Lee Campbell received virtually no punishment at his sentencing last year, and Bank of America’s Phillip Murphy last month received a prison sentence of 26 months.

It is unclear whether the Ghavami, Heinz and Welty will attempt to appeal to the Supreme Court, but Sabino said there is virtually no chance the highest court in the land would decide to hear the case. The Department of Justice declined to comment.

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BY KYLE GLAZIER

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