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DSW Stock Tip Case Dropped After Witness Gets Cold Feet

By **Chris Villani**

Law360 (December 6, 2022, 12:26 PM EST) -- Boston prosecutors have dropped a case alleging the founder of inmate money-transfer service JPay and another man used nonpublic information to trade shares of Designer Shoe Warehouse, because a key government witness stopped cooperating.

The prosecution of JPay founder Ryan Shapiro and co-defendant Kris Bortnovsky fell apart on Monday, just days after admitted stock tipper David Schottenstein said he changed his mind and **will not testify** against Shapiro.

In a brief filing Monday evening, the government noted Schottenstein's role in building the case against Shapiro and Bortnovsky, telling U.S. District Judge William G. Young that the case could not proceed without calling Schottenstein to the witness stand.

"In light of Schottenstein's unexpected withdrawal from cooperation and his decision not to testify against one of the defendants, the government respectfully seeks leave to dismiss the indictment without prejudice," prosecutors wrote. "The government's investigation is continuing and — if circumstances warrant — the government may request that a grand jury return any criminal charges, including against Bortnovsky and Shapiro, that the evidence supports."

In a late November filing, Schottenstein said that his decision to revoke his cooperation came on the advice of a psychologist and his therapist, who said testifying against Shapiro would exacerbate Schottenstein's mental health issues.

Schottenstein, who described Shapiro as "a friend and community member," said in the filing that he suffers from acute anxiety and other mental health issues "stemming from childhood trauma."

Schottenstein **pled guilty** to one count of securities fraud conspiracy before U.S. District Judge Douglas P. Woodlock at a hearing in February and asked Judge Woodlock to move up his scheduled sentencing to March in light of his decision not to cooperate. Judge Woodlock has since granted the motion.

In a statement, Shapiro's attorney Martin G. Weinberg said he is "delighted for Ryan Shapiro who is a successful and ethical entrepreneur and a committed philanthropist, who will, now that the ordeal of being a federal criminal defendant is over, continue to do great things in both his professional and personal life."

Attorneys for Bortnovsky and Schottenstein did not immediately respond to requests for comment. A government representative declined to comment.

Prosecutors claimed Schottenstein called an unnamed friend on the DSW board of directors and was given information about the company's performance before it released its 2017 second-quarter earnings report.

With that information, Schottenstein allegedly bought thousands of DSW shares and hundreds of call option contracts. Prosecutors alleged he was also given information about a December 2018 tender offer to acquire Aphria Inc. and a February 2018 announcement of a merger between grocery store chain Albertsons Cos. and Rite Aid Corp.

Schottenstein, Shapiro and Bortnovsky were sued by the U.S. Securities and Exchange Commission **in January**. The civil suit alleges Schottenstein made more than \$600,000 in illicit gains from his trades, and Shapiro and Bortnovsky made \$121,000 and \$4 million, respectively.

Shapiro and Bortnovsky were charged with securities fraud conspiracy in December 2021 and were scheduled to be tried in May.

The government is represented by Seth B. Kosto and Stephen E. Frank of the U.S. Attorney's Office for the District of Massachusetts.

Schottenstein is represented by Devin Freedman, Eric S. Rosen and Richard Cipolla of Freedman Normand Friedland LLP.

Bortnovsky is represented by James R. Froccaro, Jonathan T. Savella and Steven C. Boozang.

Shapiro is represented by Martin G. Weinberg of Martin G. Weinberg PC.

The case is U.S. v. Schottenstein, case number 1:22-cr-10005, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Dowling and Elliot Weld. Editing by Nicole Bleier.