

Ex-State Street Exec Seeks DOJ Help To Get Foreign Evidence

By **Alison Noon**

Law360, Boston (March 26, 2018, 9:55 PM EDT) -- Counsel to a former State Street executive argued in court on Monday for a federal judge to force prosecutors to wield their influence and international treaties to procure statements and documents that could aid the Boston broker-dealer charged with swindling foreign clients.

Former Executive Vice President Ross McLellan's attorney Martin Weinberg said he "desperately" needs prosecutors to use their special legal avenues to force law enforcement and former coworkers in the United Kingdom, Ireland and the Netherlands to produce evidence. Weinberg insisted the information would be material to his client's defense and said he hopes it would undermine the credibility of the government's witnesses or help jurors understand McLellan's work at the bank holding corporation.

"I'll accept whatever the government can receive because it gets me closer to a fair trial," Weinberg said.

Weinberg asked U.S. District Judge Leo T. Sorokin to order the DOJ to enforce mutual legal assistance treaties, or MLATs, that the U.S. Department of Justice enjoys with the Netherlands and Ireland. The pacts are typically used to help prosecutors get foreign evidence, but Weinberg has requested they be used to help McLellan. He also asked them to lean on London law enforcement to speed up document requests.

Trial is set to commence in 10 weeks to decide whether McLellan scammed overseas clients seeking to move or liquidate large portfolios, as prosecutors allege. He is charged with conspiracy, wire fraud and securities fraud for allegedly overcharging at least six clients in 2010 and 2011, including government pension funds in Ireland and the U.K. and a sovereign wealth fund in the Middle East.

Judge Sorokin directed Weinberg to ask the people targeted in his motions to testify during trial by video conference and seek other ways to get what he needs without a court order.

"I'd be interested to see what practically could be done," the judge said.

Weinberg promised to prioritize his requests in the coming days, but declined to withdraw requests.

Assistant U.S. Attorney Stephen Frank said exercising the treaties is a “nonstarter” and “just an impossibility in this case.”

Prosecutors expect a request made on behalf of a defendant would be denied, Frank said, because the partnership is intended for government benefit. At any rate, he said, such a request could take months, which they don’t have.

But the judge said people can be more reasonable than litigants might expect.

“As attorneys, I suspect they appreciate the significance of cases in which people’s liberties are at stake,” Judge Sorokin said. “Especially when they can do it from the comfort of their law office.”

Frank argued he has no special powers to make the former State Street executives see it that way.

“I don’t think I have any greater likelihood of prevailing upon them than anyone else does,” Frank said. “I don’t know why they’d be more responsive to my request than to Mr. Weinberg’s request.”

The trial is slated to begin April 4.

The government is represented by Assistant U.S. Attorney Stephen E. Frank and William Johnston of Main Justice.

McLellan is represented by Martin G. Weinberg.

The case is U.S. v. McLellan et al., case number 1:16-cr-10094, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Jody Godoy. Editing by Alanna Weissman.

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