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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

JPay Founder Says Insider Trading Case Falls Short

By **Brian Dowling**

Law360 (October 7, 2022, 4:25 PM EDT) -- The founder of correctional services company JPay said Friday that the government can't sustain insider trading charges leveled against him because the claims spell out that he made trades "while in possession" of material nonpublic information, not that the confidential info was used in the trades.

Ryan Shapiro — who founded JPay, which provides communications and money-transfer services for prisoners and parolees in 35 states — urged U.S. District Judge William G. Young to dismiss the $4 million **insider trading case** filed against him and an associate in December.

Shapiro and Kris Bortnovsky are accused of using nonpublic earnings and merger information from a confidential witness to trade stocks of home decor company At Home Group Inc., cannabis cultivator Aphria Inc., shoe company Designer Shoe Warehouse and pharmacy Rite Aid Corp.

But Shapiro said the indictment is flawed and should be dismissed because it simply says he traded while in possession of the information, falling short of what is required for securities fraud.

"Conspicuously absent is any allegation that Mr. Shapiro used nonpublic information to trade in any of the securities relevant to this case," Shapiro said in the **filing**.

He argued in the filing that the Supreme Court's standard for insider trading liability is the use of information rather than its mere possession. Three of the four federal circuit courts considering the question have also required allegations of use rather than simple possession, Shapiro argued.

The First Circuit recently declined to weigh in on the distinction, though one judge on the appeals panel commented that case law in the circuit showed "some glimmers of doubt" about a conviction based on possession rather than use, the filing said.

In a **separate motion**, Shapiro asked the court to dismiss the securities fraud claims relating to his transactions in At Home's stock.

"Shapiro, at worst, held At Home shares based on nonpublic information, after purchasing them based on information from publicly available sources, and sold the shares months later long after the nonpublic information had gone stale," the JPay founder said.

Martin G. Weinberg, an attorney for Shapiro, told Law360 on Friday that the motions "raise two important and cutting-edge issues that are of significant importance to the defense of Ryan Shapiro, an entrepreneur and philanthropist, who has asserted his innocence to the pending insider trading allegations."

A spokeswoman for the U.S. Attorney's Office declined to comment on the motion Friday.

David Schottenstein, the witness who allegedly fed tips to Shapiro and Bortnovsky, **pled guilty** in February, admitting to calling an unnamed close friend on the board of directors at DSW to learn how the company was faring ahead of a 2017 earnings report.

The U.S. Securities and Exchange Commission hit the trio — Schottenstein, Shapiro and Bortnovsky — with a civil suit in January, claiming Schottenstein generated illicit gains of more than $600,000 from the trades, Bortnovsky made $4 million, and Shapiro made $121,000.

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

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

Bortnovsky is represented by James R. Froccaro Jr.

The case is U.S. v. Bortnovsky et al., case number 1:22-cr-10006, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Max Jaeger and Chris Villani. Editing by Vaqas Asghar.