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FCA Obtains Two Criminal Convictions in High-Profile Insider Dealing Trial

The jury in the so-called 'Tabernula' ("*Little Tavern*") case has on Monday delivered its verdict after a 12-week trial. Two of the five defendants have been convicted, whilst the other three have been acquitted of all charges. Sentencing is yet to take place.

Facts

The five defendants (Martyn Dodgson, Andrew Hind, Ben Anderson, Iraj Parvizi and Andrew "Grant" Harrison) were accused by the Financial Conduct Authority ("**FCA**") of conspiracy to insider deal, that conspiracy spanning nearly four years (November 2006 to March 2010). The allegations centered on five different acts of insider dealing related to five different stocks.

The allegation was that Mr Dodgson and Mr Harrison, former colleagues, used inside information collected (either through their own work or gleaned from the work of their colleagues) from their jobs as corporate brokers to carry out trades in certain securities. Mr Dodgson and Mr Harrison would pass the inside information on to 'middle man' Mr Hind, who would then organize for the trades to be executed by day traders Mr Anderson and Mr Parvizi. The five allegedly used complex cover-ups such as code names, encrypted memory sticks and disposable cell phones to maintain the scheme.

FCA Investigation

This was an important trial for the FCA, since the eight-year Tabernula investigation (jointly run by the Serious Organized Crime Agency, now the National Crime Agency) is widely regarded as the largest and most complex of its kind ever tackled by the regulator. Vast resources were required to unravel the scheme, involving the review of enormous amounts of data and even (apparently for the first time in an FCA investigation) 'bugging' the offices of two of the accused.

The investigation attracted widespread attention in March 2010 when several of the defendants' workplaces were subject to 'dawn raids'. The Tabernula investigation and subsequent trial were seen as a signal from the FCA that its stated goal of becoming a more "*confident, intelligent and sophisticated*" enforcement agency was not just rhetoric.

Verdict

On Monday, after nine days deliberating, the jury found Mr Dodgson (who during the relevant period worked at Deutsche Bank, Morgan Stanley and Lehman Brothers) and Mr Hind (a Chartered Accountant and a former advisor to Sir Philip Green) guilty of conspiring to insider deal by a majority of 10-2. The FCA described these two as having "*instigated*" the conspiracy. The jury acquitted the other three defendants.

Notably, Mr Hind's barrister is reported as saying in Court of the arrangement between the defendants: "*We may not like [the arrangement]; we might think it sneaky or underhand. But it's not the criminality with which he's charged.*"

The FCA commented of the verdict, "*This was an extraordinary and complex case of a type not prosecuted in this country before. The message is loud and clear, that the FCA will not tolerate sophisticated predatory criminals abusing our markets. This case demonstrates our capability and determination to root out this kind of abuse and ensure our market and the investing public are properly protected.*"

It is interesting to note the FCA was unable to secure a conviction of Mr Harrison, the other individual (along with Mr Dodgson) accused of passing on inside information. This may underline the uncertainty in securing convictions in respect of these types of complex offences, particularly when the evidence is so wide-ranging and spans several years.

The FCA is expected to be eager to see maximum penalties imposed, but it remains to be seen what the Judge's decision on sentencing will be (sentencing may happen as early as the end of this week). Insider trading carries a maximum sentence of seven years in prison.

These two convictions bring the total number of convictions as part of 'Operation Tabernula' to five. Three others—Paul Milsom, Graeme Shelley and Julian Rifat—were sentenced last year in a separate trial after pleading guilty. Mr Milsom and Mr Rifat were sentenced to two years and 19 months in prison respectively; Mr Shelley received a two-year suspended sentence.

Conclusion

The Tabernula convictions represent another instance of the FCA's activity and success in criminal prosecutions for insider dealing, which have been pursued in particularly egregious cases rather than reliance only on civil market abuse powers.

Since December 2001, the then Financial Services Authority ("**FSA**") has had the power to prosecute under the Criminal Justice Act. It achieved its first conviction in 2009. At the time of the Tabernula 'dawn raids' in March 2010, the FSA had only secured five convictions for insider dealing, none of which involved conduct as complex or high-profile as the Tabernula case. Since then, and including Mr Dodgson and Mr Hind, the FSA / FCA has secured an additional 25 convictions for insider dealing.

The potential risks for financial services institutions are apparent. It was, in this case, by virtue of the fact that some of the perpetrators worked at firms where price-sensitive information was held that they could make use of it for insider dealing. Therefore, whilst it is obviously not possible for firms to control an individual's behavior, an institution's systems, controls and policies around inside information are key.

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