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Jury rejects inside-info trading claim

SEC, however, wins three lesser counts against stock adviser

BY PATRICIA MANSON
Law Bulletin staff writer

A federal jury has determined that a Chinese investment adviser and his firm did not use inside information in making stock purchases that netted an $8 million profit.

The jury found in favor of Siming Yang and Prestige Trade Investments Ltd. on an insider-trading count included in a lawsuit brought by the Securities and Exchange Commission.

The suit accused Yang and Prestige Trade of using information not known to the public — a plan to take Zhongpin Inc. private — to profit on trades of the company's securities.

Zhongpin is a China-based pork processor that sells products to customers such as Wal-Mart Stores Inc. and McDonald's Corp.

Prestige Trade invested $28 million in Zhongpin in the two weeks before March 27, 2012.

That day, Zhongpin announced that its chairman and chief executive officer had offered to buy all of the company's outstanding stock for $13.50 a share.

The price of the shares jumped immediately, causing the value of Prestige Trade's investment to rise by about $8 million.

In its suit, the SEC alleged that Yang and Prestige Trade took advantage of inside information about the upcoming offer to take Zhongpin private to realize illicit profits.

Prestige Trade countered that Yang had researched publicly available information and concluded that the company's stock was undervalued.

Following a trial, a jury in U.S. District Judge Matthew F. Kennelly's court returned a verdict Monday that was a complete victory for Prestige Trade, but not for Yang.

While finding in Yang's favor on the insider-trading count, the jury found in favor of the SEC on three other, less serious counts.

One of those counts accused Yang of "front-running," or secretly placing trades on Zhongpin stock on his own behalf before placing trades on behalf of Prestige Trade.

That move allowed Yang to reap the benefit of the higher stock price triggered by the later "market-moving trades" made on behalf of Prestige Trade, the SEC suit alleged.

The jury also found in favor of the SEC on two counts accusing Yang of causing false disclosures to be made concerning his personal trades.

Kennelly has directed the SEC to file a brief by Feb. 10 concerning the relief that should be granted on the three counts on which Yang was found liable.

A status hearing is set for Feb. 12.

Prestige Trade and Yang were the only defendants remaining when the suit went to trial. Other defendants either settled the case or were voluntarily dismissed by the SEC before trial.

The case is *U.S. Securities and Exchange Commission v. Siming Yang, et al.*, No. 12 C 2473.

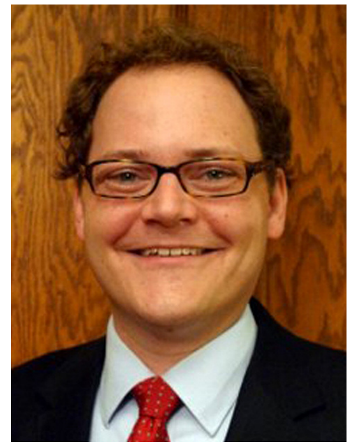
Thomas More Leinenweber and Justin L. Leinenweber of Leinenweber, Baroni & Daffada LLC represented Prestige Trade at trial.

"I am thrilled for my client that the jury understood the case and recognized that Prestige did nothing wrong," Thomas Leinenweber said.

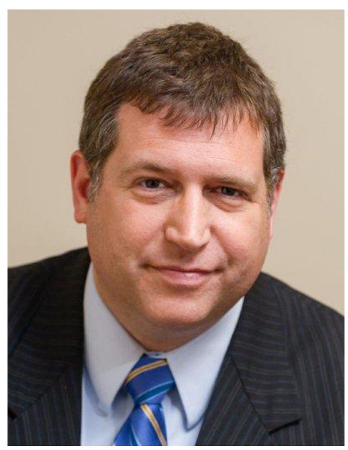
He noted that Prestige Trade and Yang could have been ordered to pay a penalty and disgorgement of up to $32 million if the jury determined they engaged in insider trading.

Yang was represented at trial by James L. Kopecky and Howard J. Rosenburg of Kopecky, Schumacher, Bleakley & Rosenburg P.C.

Thomas More Leinenweber



Justin L. Leinenweber



Howard J. Rosenburg

James L. Kopecky

Like Leinenweber, Rosenburg said he and his client are "thrilled" with the verdict on the insider-trading count. He said Yang is considering his next move concerning the jury's verdict in favor of the SEC on the other counts.

Yang faces a maximum fine of about $100,000, defense attorneys said.

Both Rosenburg and Leinenweber praised the SEC's attorneys.

"They were extraordinarily talented and fought hard on the SEC's behalf," Leinenweber said.

The lead attorney for the SEC was Timothy S. Leiman. Other SEC attorneys who tried the case were Emily Ann Heller, Jedediah B. Forkner and Jonathan S. Polish.

Robert J. Burson, associate regional director of the SEC's Chicago regional office, said in an e-mail that the commission is pleased the jury held Yang accountable "for significant deception" in Zhongpin securities trades.

"While the verdict was not what we sought in all respects," he said, "it demonstrates the SEC's determination and ability to hold individuals accountable for misconduct relating to trading of foreign-issued securities on U.S. exchanges."