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Still No Clarity For 8 Charged Discord Traders, Judge Says

By **Catherine Marfin**

Law360 (April 12, 2023, 5:15 PM EDT) -- A Houston federal judge has again denied a request from defendants accused of orchestrating a "pump-and-dump" stock scheme over social media to have the government clarify its indictment, telling the parties that the arguments they were making should be tried before a jury.

"If I tweeted 'Man, this is the greatest thing since sliced bread,' but at the same time I'm dumping my shares — those sound like jury issues to me," U.S. District Judge Andrew S. Hanen said toward the end of a nearly two-hour hearing Wednesday.

Edward Constantinescu, one of eight men charged in the scheme the federal government alleges was carried out on Twitter and Discord, was asking the judge for a bill of particulars and grand jury transcripts. A bill of particulars is a document that clarifies claims in a lawsuit.

Matthew A. Ford of Ford O'Brien Landy LLP, counsel for Constantinescu, told the court that the 21-count indictment, which accuses the men of profiting \$114 million between January 2020 and April 2022, isn't specific enough for defense counsel to identify exactly which statements each defendant made that were allegedly false.

"Ten times out of 10, the government comes in with a memorandum that says, 'Hey, the traffic light was red, your client says it was green,'" Ford said, arguing that the documents the defense has been provided with are not enough.

The government is scheduled to complete its discovery sometime in June, according to Judge Hanen. So far, the defense has only been provided with stock tickers and spreadsheets that detail how many times each stock was mentioned by each defendant on Twitter or on Discord group chats and direct messages.

"The government has responded by giving us generic categories of why they think these were false. I don't think that gets them across the finish line," he said.

Scott Armstrong, assistant chief of the U.S. Department of Justice's Fraud Section, said the February superseding indictment includes two paragraphs, one that explains the type of fraudulent messages and one that explains why those messages were false, which is enough for the indictment to hold up.

"Evidence can have dual purposes, and a lot of these tickers do," he said, referring to the spreadsheets pointed to by Ford. "To say that every single ticker on this list has to be a conspiracy ... is a fundamental misunderstanding."

Armstrong showed Judge Hanen tweets that Constantinescu posted about stock of social media company DatChat Inc., in which he told followers the stock was going to "Mars" and then quickly sold 91% of his shares.

"It was a quick trade," he said. "There was no long-term strategy."

But Ford told the court that his client's posts were simply price predictions and that securities law doesn't forbid people from making predictions online.

"There is nothing in securities law that requires someone to hold a stock indefinitely as the price is going down," he said.

When he denied the motion for bill of particulars, Judge Hanen said most of the arguments Ford made Wednesday were more suited for a summary judgment motion or a motion to dismiss.

"What Mr. Ford was arguing was that when all this is said and done, this ain't a crime," the judge said.

Judge Hanen **previously overruled** a separate motion for a bill of particulars filed by defendant John Rybarczyk in March. The main issue during that hearing was a \$100 million gap between the introduction to the indictment and the dollar figures included in the counts, which only totaled around \$14 million. The gap is supposed to be clarified once the government makes additional disclosures by the June deadline, Ford said.

Judge Hanen told Rybarczyk's counsel he would be open to considering another filing if the defendants don't get that clarity.

The eight men — Texans Constantinescu, Rybarczyk, Perry "PJ" Matlock and Daniel Knight; Californians Gary Deel and Tom Cooperman; Mitchell Hennessey of New Jersey; and Stefan Hrvatin of Florida — were **first indicted in December**.

Knight entered a guilty plea to count one of the indictment, conspiracy to commit securities fraud, in March. He is scheduled to be sentenced in June 2024, according to the court docket.

Judge Hanen granted a motion from Rybarczyk regarding the forfeiture of his assets, freezing one of his Bank of America accounts and allowing him to keep his cars. The full motion remains under seal.

The case is set to go to trial in October.

Ford told Law360 after the hearing that despite his motion being denied, "it was a very good day" because of Judge Hanen's attention to their legal arguments.

"From our perspective, as the kind of cliché goes, sometimes you lose the battle but win the war," he said.

Armstrong declined to provide additional comment.

The government is represented by Glenn S. Leon, John J. Liolos and Scott Armstrong of the U.S. Department of Justice, and Alamdar Hamdani and Thomas H. Carter of the U.S. Attorney's Office for the Southern District of Texas.

Constantinescu is represented by Matthew A. Ford and Cara J. Filippelli of Ford O'Brien Landy LLP.

Rybarczyk is represented by Philip H. Hilder, Q. Tate Williams and Stephanie K. McGuire of Hilder & Associates PC, and Eric Samuel Rosen of Freedman Normand Friedland LLP.

Hennessey is represented by Laura Marie Kidd Cordova and Michael J. Murtha of Jackson Walker LLP.

Matlock is represented by Luis A. Reyes and Johnny Sutton of Ashcroft Sutton Reyes LLC and William M. Stradley of the Stradley Law Firm.

Deel is represented by Zachary Fertitta of Zachary B. Fertitta PC and Neal Andrew Davis.

Hrvatin is represented by Edward Mallett of Mallett Saper Berg LLP.

Cooperman is represented by Chip B. Lewis and Erin Michelle Epley of Erin Epley Law Firm.

Knight is represented by Cordt Cullen Akers of The Akers Firm.

The case is USA v. Constantinescu et al., case number 4:22-cr-00612, in the U.S. District Court for

the Southern District of Texas.

--Editing by Rich Mills.

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