Feds Blast Ponzi Conspirator's Bid To Trim Indictment

By **Carmen Germaine**

Law360, New York (August 1, 2017, 8:12 PM EDT) -- Prosecutors told a Pennsylvania federal court Tuesday that a man charged for his role in running an alleged $54.5 million Ponzi scheme is trying to "twist and contort" the facts by arguing much of the indictment lies outside the statute of limitations on wire fraud. Wayde McKelvy had filed a motion to dismiss eight charges of wire fraud from a 10-count indictment alleging he helped convince investors to pour their life savings into a real estate and green energy company, Mantria Inc., that functioned as a Ponzi scheme, saying the longer statute of limitations on wire frauds that affect financial institutions doesn't apply to his case.

But prosecutors said Friday that the longer time period does apply, because the collapse of the fraud led to the bankruptcy of related entity Mantria Financial, a financial institution and mortgage lending business set up by McKelvy's co-conspirators to finance mortgages for buyers who purchased real estate from Mantria Inc.

"The government cannot conceive of an affect greater than bankruptcy and receivership for a financial institution," the response brief said.

McKelvy was indicted **in September 2015**, along with Troy Wragg and Amanda Knorr. Prosecutors alleged that Wragg and Knorr founded Mantria, while McKelvy ran seminars and advertisements encouraging potential investors to liquidate their savings and invest in the company.

The company started out as a real estate business, and Wragg, Knorr and McKelvy did spend some of the investment money on land in Tennessee, according to the indictment. But after making limited improvements to the land in order to create the appearance of development for investors, they moved toward green energy, and began investing in facilities to manufacture "biochar," a charcoal substitute made from organic waste.

Although the investments were limited, prosecutors said the company managed to raise more than $54 million, mainly because of the efforts of McKelvy, who operated what he called "Speed of Wealth" clubs that advertised on television, radio and the internet, and held seminars for prospective investors. The indictment says McKelvy taught investors to liquidate all their assets such as mutual funds and 401(k) plans, to take out as many loans out as possible, such as home mortgages and credit card debt, and invest all those funds in Mantria.

The scheme continued until November 2009, when the U.S. Securities and Exchange Commission initiated civil securities fraud proceedings against Mantria in Colorado. In September 2011, U.S. District Judge Christine M. Arguello found in favor of the SEC, ordering an injunction against the company and calling for more than $37 million in disgorgement.

Wragg and Knorr have both **pled guilty** to the criminal charges, while the case against McKelvy continues.

He first filed his motion to dismiss the eight counts of wire fraud in March, then submitted an amended version in June, arguing that portion of the indictment is time-barred under the five-year statute of limitations on wire fraud.

McKelvy said the longer 10-year statute of limitations on fraud that affects a financial institution doesn't apply, arguing Mantria Financial didn't issue mortgages or expect to turn a profit, and so isn't a mortgage lending business for the purposes of the statute.

But the U.S. Department of Justice replied that Mantria Financial had kept detailed records of its mortgages, and that businesses aren't required to make a profit to qualify as a mortgage lending business under the statute. Even if they were, the response said, "the whole point of Mantria and Mantria Financial was to make money."

McKelvy further argued that Mantria Financial wasn't affected by the alleged fraud because it was on the brink of bankruptcy even before Mantria Inc. collapsed, but prosecutors again disagreed, saying that as Mantria Financial declared bankruptcy after the SEC action, any possible future bankruptcy is irrelevant.

"The defendant is essentially arguing that he cannot be convicted of murder because his victim would have eventually died of natural causes at some indefinite point in the future," the brief said.

The motion to dismiss also attacked the government's alternate theory that financial institutions were affected by the fraud because investors were persuaded to borrow money from other banks to invest in Mantria, arguing prosecutors couldn't provide enough details about how the institutions were affected. The government responded Tuesday by pointing to its discovery material, including details of credit card withdrawals and home equity lines of credit victims took out to invest in Mantria.

McKelvy has filed another motion to dismiss nearly all of the indictment, including portions of the securities fraud charges, arguing prosecutors failed to state an offense. The DOJ has yet to respond to that motion, filed in July, in which McKelvy said he denies that he knew overall that "Mantria was a fraud or that its claims of financial success were bogus," but admits he made two false representations to investors to increase his commissions.

Representatives for McKelvy and the government did not respond Tuesday to requests for comment.

The DOJ is represented by Louis D. Lappen and Robert J. Livermore.

McKelvy is represented by Walter S. Batty Jr. and William J. Murray Jr.

The case is USA v. Wragg et al., case number 2:15-cr-00398, in the U.S. District Court for the Eastern District of Pennsylvania.

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