

2nd Circ. Drops Fraud Charges Against Ex-KPMG Exec

By Khadrice Rollins

Law360 (December 6, 2023, 8:34 PM EST) -- A Second Circuit panel Tuesday approved federal prosecutors' request to remand the appeals of a former executive at the accounting firm KPMG and an inspections leader with the Public Company Accounting Oversight Board, so their fraud charges could be dismissed in district court.

David Middendorf, an ex-KPMG partner, and Jeffrey Wada, a former PCAOB official, were both convicted in March 2019 of conspiring to steal secret board schedules so the accounting firm could better prepare itself for audit inspections. The case turned in part on whether the board's inspection schedules were "property."

Middendorf was convicted on one count of conspiracy to commit wire fraud and three counts of wire fraud, while Wada was convicted of one count of conspiracy to commit wire fraud and two counts of wire fraud. They were sentenced to one year and one day, and nine months in prison, respectively, with both to also serve three years of supervised release.

But after the Second Circuit's 2022 decision in *United States v. Blaszcak* that ruled "merely obtaining advance information as to what the agency's preferred regulation would be, and when it would be announced" could not be considered government property for the purposes of a common fraud statute relied on by prosecutors, Middendorf and Wada were in position to win their appeal.

At the end of July, prosecutors filed a motion to have Middendorf and Wada's appeals remanded to the lower court. The circuit court granted that request Tuesday.

"Mr. Wada committed no crime, and should never have been prosecuted," Wada's counsel, Roman Martinez of Latham & Watkins LLP, told Law360 in a statement Wednesday. "We are pleased with the Second Circuit's decision directing the district court to dismiss this case."

The government declined to comment further and counsel for Middendorf and the PCAOB did not immediately respond to Law360's requests for comment Wednesday.

"The Government has determined, in consultation with the Solicitor General's Office, that the evidence at trial was insufficient to establish that the confidential information at issue in this case constituted "property" under [*Kelly v. USA*] and *Blaszcak II* because it had value only in the 'exercise of regulatory power,'" prosecutors wrote in the July motion.

U.S. Circuit Judges Robert D. Sack, Raymond J. Lohier and Maria Araújo Kahn sat on the panel for the Second Circuit.

The government is represented by Margaret Graham and Danielle Renee Sassoon of the U.S. Attorney's Office for the Southern District of New York.

Wada is represented by Roman Martinez, Jason Ohta and Michael Clemente of Latham & Watkins LLP, Justin Weddle of Weddle Law PLLC, and Stephen Cook of Brown Rudnick.

Middendorf is represented by Gregory Scott Bruch of Bruch Hanna LLP and Guy T. Petrillo, Nelson Andrew Boxer, Amy Ruth Lester and Caelyn Elizabeth Stephens of Petrillo Klein & Boxer LLP.

The case is USA v. Middendorf et al, case number 19-2983, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Jessica Corso. Editing by Alex Hubbard.