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SEC Loses 2nd Insider Trading Trial In 7 Days

By **Brandon Lowrey**

Law360, Los Angeles (June 06, 2014, 4:50 PM ET) -- A California federal jury on Friday handed the U.S. Securities and Exchange Commission its second insider trading trial loss in a week, siding with the founder of storage device maker STEC Inc. who was accused of deceiving shareholders to reap $267 million for himself and his brother.

The suit, filed in 2012, alleged Manouchehr Moshayedi exploited his knowledge that a major customer wanted far fewer of the company's most profitable products — information that wasn't known to the public — when he sold a significant portion of his stock holdings as well as shares owned by his brother, a co-founder of the Santa Ana, California-based company.

In previous court filings, Moshayedi countered that the SEC's claims "are an egregious case of fraud by hindsight."

The SEC's defeat comes seven days after a New York federal jury found hedge fund manager Nelson Obus not liable for an alleged $1.3 million insider trading scheme. In both cases, the juries reached their verdicts within a day of beginning deliberations.

"We are extremely grateful to the jury for their hard work and their focus on the evidence," said defense attorney Patrick Gibbs of Latham & Watkins LLP. "We believe the jury reached the right result."

The case against Moshayedi reaches back five years. During the first half of 2009, STEC was a Wall Street darling as its stock rose 800 percent from $4 to $32 per share. In November 2009, however, the stock tumbled 38 percent on the news that top customer EMC Corp. "might" be holding STEC inventory, particularly its flagship solid state drive product ZeusIOPS, according to the SEC's complaint.

STEC's stock bottomed out in early 2010 as EMC revealed it would not be taking any new orders from the company. Moshayedi sold his shares in August 2009 with full knowledge that EMC would be slashing its orders and had, in fact, given EMC a $2 million discount to take on additional inventory so STEC could meet analysts' expectations and a secondary offering would go off without a hitch, the SEC alleges.

On Friday, jurors returned the not-guilty verdict following a two-week trial, marking the SEC's latest defeat.

In addition to the Obus case, SEC has lost recent, high-profile suits against Dallas Mavericks owner Mark Cuban and former Citigroup Inc. employee Brian Stoker, among other defendants.

A spokesman for the agency told Law360 on Friday that the SEC is undeterred.

"We respect the jury's verdict but will continue to aggressively enforce the law when we believe the evidence supports the allegations," SEC spokesman John Nester said.

Moshayedi is represented by William R. Baker, Sean M. Berkowitz, Patrick E. Gibbs, Matthew Rawlinson and Michele D. Johnson of Latham & Watkins LLP, and Thomas P. O'Brien and Thomas A. Zaccaro of Paul Hastings LLP.

The case is U.S. Securities and Exchange Commission v. Manouchehr Moshayedi, case number 8:12-cv-01179, in the U.S. District Court for the Central District of California.

--Additional reporting by Lance Duroni and Max Stendahl. Editing by Emily Kokoll.
