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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-JPM Banker Wants 'Silver Platter' Remark Out Of Retrial

By **Stewart Bishop**

Law360 (July 29, 2019, 8:06 PM EDT) -- Former JPMorgan Chase & Co. investment banker Sean Stewart and federal prosecutors last week filed dueling bids to shape Stewart's upcoming retrial over an alleged insider trading scheme involving his father, with the defense seeking to bar the admission of a statement by the elder Stewart that his son handed him stock tips on a "silver platter."

In a flurry of motions in limine ahead of a planned September retrial of Sean Stewart for what prosecutors say was a scheme to leak confidential information about health care company mergers to his father, attorneys for Sean Stewart are taking aim at the central piece of evidence in the case — a recorded conversation between Sean Stewart's father, Robert Stewart, and an alleged co-conspirator.

Shortly before the 2015 arrest of Robert Stewart, agents had taped a conversation between him and cooperator Richard Cunniffe at a Manhattan diner, in which Robert Stewart described his son as once saying, "I can't believe it. I handed you this on a silver platter and you didn't invest in this."

Sean Stewart was convicted at trial on charges stemming from his allegedly illegal tipping of Robert Stewart about five deals that took place from 2011 to 2015 involving Kendle International Inc., Kinetic Concepts Inc., Gen-Probe Inc., Lincare Holdings Inc. and CareFusion Corp. In 2017, U.S. District Judge Laura Taylor Swain sentenced Sean Stewart to three years in prison.

But a divided Second Circuit panel last year **vacated the conviction**, finding the trial judge improperly blocked conflicting statements made by Robert Stewart following his arrest regarding the "silver platter" conversation from coming into evidence at trial.

When asked about the comment by the FBI afterwards, Robert Stewart described his son's remarks in different terms, saying, "'Y'know, all these deals — if you were trading — you could have made like millions of dollars.' And I said, 'Sean nobody's going to trade and make millions of dollars on this stuff.' That wasn't his intention."

Sean Stewart's lawyers now say the "silver platter" statement by Robert Stewart is "vague, double hearsay" and "uncorroborated." While the government claims this statement shows Sean Stewart's participation in an insider trading conspiracy, the former investment banker's lawyers say the "silver platter" statement, taken on its face, shows that Robert Stewart didn't invest and later in the conversation claimed to have denied to Sean Stewart that he ever would by saying, "like I'm going to actually do this."

"Because the government cannot meet its burden to prove by a preponderance of the

evidence both that there was a conspiracy between Robert and Sean, and that Robert's statement to Cunniffe was in furtherance of a conspiracy between Robert and Sean, the statement should be excluded," the motion says.

Sean Stewart has denied making the "silver platter" comment and contends that his father later told the FBI the fateful statement was merely a drunken boast from a young man who was "just proud of the fact that he was doing deals."

In remanding the case for a new trial, the Second Circuit panel held that Robert Stewart's post-arrest statements to law enforcement offered a potentially different interpretation of the "silver platter" remarks that could have tempered that statement's "devastating" effect.

The court noted that the case was an "unusual" one in that Sean Stewart has never denied occasionally mentioning confidential deals in conversations with his father, but asserted that he did not know his father would turn around and trade on the information.

Prosecutors on Friday sought to limit the amount of Robert Stewart's post-arrest remarks to FBI agents that can be shown to jurors in the retrial, saying only two statements Robert Stewart made to FBI agents explaining the "silver platter" remark should be allowed in, as opposed to the entire 44-minute interview.

An attorney for Sean Stewart and a spokesman for the Manhattan U.S. Attorney's Office both declined to comment.

The government is represented by Samson Enzer and Richard Cooper of the U.S. Attorney's Office for the Southern District of New York.

Sean Stewart is represented by Steven M. Witzel, Lawrence Gerschwer, R. David Gallo and Leigh G. Rome of Fried Frank Harris Shriver & Jacobson LLP.

The case is U.S. v. Sean Stewart, case number 1:15-cr-00287, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jody Godoy. Editing by Daniel King.

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