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## Russian Can't Trim Stock Fraud From Hack-And-Trade Case

By **Brian Dowling**

Law360, Boston (October 31, 2022, 3:09 PM EDT) -- A Boston federal judge on Monday denied a Russian national's bid to trim a securities fraud charge from other claims he faces in connection with an alleged \$82.5 million insider trading scheme run on hacked financial data.

Vladislav Klyushin, charged alongside two others for leveraging stolen filings from U.S. corporations to make profitable stock trades, had argued for dismissing the securities fraud count because he never owed a fiduciary duty to the hacked U.S.-based financial filing companies, the corporate clients or anyone he transacted with on the market.

But U.S. District Judge Patti B. Saris denied Klyushin's request from the bench during a hearing Monday, agreeing with federal prosecutors that a Second Circuit opinion **upholding a civil securities fraud charge** in SEC v. Dorozhko, a similar hack and trade case, is enough for the count to survive.

"Dorozhko is controlling law and I'm going to deny the motion to dismiss," Judge Saris said.

The Second Circuit in Dorozhko upheld the securities fraud claim against a Ukrainian national charged with trading on info stolen from the servers of investor relations firm Thompson Financial Inc. The appeals court reversed the district court's ruling that hacking isn't "deceptive" under the securities law because some breach of fiduciary duty is required.

The same appeals court applied the same logic to a similar case in 2021, this time in the criminal context, in U.S. v. Khalupsky, involving the hacking of newswire companies PR Newswire, Marketwire and BusinessWire to steal and trade using market-moving information.

Judge Saris mused over what the First Circuit would do when presented with such a case, but ultimately accepted **the government's view** that the Second Circuit best mapped it out.

"In a way, if I go with the Second Circuit it's a placeholder to see if the First Circuit goes the same way," the judge said.

The parties also argued Klyushin's motion to block the government from using the contents of his iCloud account that a magistrate judge said could be seized in October 2020.

Klyushin's attorney Maksim Nemtsev told Judge Saris that Apple handed over the entire contents of his client's iCloud account, which overstepped the limited timeframe of 2018 until the present authorized by the warrant.

"iClouds are different than a cellphone, than an email account, in the sense that they do not obtain one image or email address, they can contain all the info for every phone you ever owned that's backed up on the account," Nemtsev said. "That's why when they seized Mr.

Klyushin's account, they got 380 gigabytes worth of information, with data going back as far as May 2005. It is a tremendous amount of info and the government has access to all of it."

The judge asked the government, "Why'd you take more than 2018 to the present?"

Assistant U.S. Attorney Seth Kosto responded that companies like Apple and Google often hand prosecutors the whole account, despite being ordered to provide a more narrow range of materials from a specific time frame.

"It's not on the Googles and Apples to review accounts," Kosto said.

Kosto said the government sifts through the records provided to find what fits the warrant and can be used in its case.

"I'm troubled by it," the judge said. "If I said you could go into the second-floor apartment of a triple-decker, and someone went into the first-floor apartment."

The prosecutor responded that evidence taken from the first floor would be suppressed.

Judge Saris took the motion to suppress under advisement.

The government is represented by Seth Kosto and Stephen E. Frank of the U.S. Attorney's Office for the District of Massachusetts.

Klyushin is represented by Maksim Nemtsev of the Law Offices of Martin G. Weinberg PC as well as Marc Fernich.

The case is U.S. v. Klyushin et al., case number 1:21-cr-10104, in the U.S. District Court for the District of Massachusetts.

--Editing by Alex Hubbard.