

Charges Against Ex-Fleet Specialist Trader Dropped

Monday, October 09, 2006 --- Federal prosecutors in Manhattan have decided to shelve a securities fraud case against a former specialist at Fleet Specialist Inc. who allegedly executed improper trades on the floor of the New York Stock Exchange.

The prosecutors said it would not be in the “interests of justice” to pursue two counts of securities fraud against Donald R. Foley II, according to the filing on Friday.

In 2005, prosecutors hit Foley and 14 former specialists with criminal charges for allegedly executing improper trades at the NYSE.

The U.S. Attorney’s office in Manhattan dropped a similar case last month against a former specialist at Bear Wagner Specialists LLC.

Foley was accused of executing trades that were improperly positioned between buyers and sellers as part of a scheme to take in illicit gains for the firm and trade ahead of customer orders from January 1999 to April 2003. When a specialist goes between orders rather than matching customers’ buy and sell orders, the action is known as “interpositioning.”

“By interpositioning and buying or selling stock for the proprietary account at the most advantageous price available, the specialists allegedly disadvantaged at least one of the customer orders that was a party to the transaction by executing the customer orders at a less advantageous price,” prosecutors stated in court documents.

Prosecutors alleged that through interpositioning, each of the 15 specialists earned illegal trading profits, ranging from about \$150,000 to about \$4.4 million. The total amount of illicit trading profit from interpositioning by all of the defendants was alleged to be about \$13.5 million, and the total amount of customer harm was claimed to be about \$19 million.

Foley was a specialist for Chase Manhattan Bank, and later for J.P. Morgan Chase & Co. Fleet Specialist, which is now known as Banc of America Specialist Inc., is a subsidiary of Bank of America Corp.

Specialists match buyers and sellers at the stock exchange, and they offer liquidity by purchasing and selling shares when an imbalance occurs on the floor.

“We’re terrifically pleased. We felt all along that the government indicted an innocent man,” said Franklin B. Velie, Foley’s lawyer.

Velie said that the government made the mistake of looking at the times when the cash drawer was a few pennies short, but not when it was long.

"We did the computer analysis, and the prosecutors measured the wrong thing," he said. "The government should be commended for reconsidering and dismissing this case."

Jury selection for the fraud trial of David Finnerty, also a former Fleet specialist alleged to have executed illicit trades, is set for Thursday.

The end of Foley's case comes just months after two former specialists at Van der Moolen Specialists USA LLC, which is a subsidiary of Van der Moolen Holdings NV, were separately acquitted on illicit trading charges.

A jury acquitted Richard Volpe of two counts of securities fraud last month. Robert A. Scavone, Jr. was acquitted of one count of securities fraud in August.

Joseph Bongiorno and Patrick McGagh, both former Van der Moolen specialists, pled guilty to one count of securities fraud in May, and their sentencing is slated for Thursday.

Separately, a jury found former Van der Moolen specialists, Michael Hayward and Michael Stern, each guilty of a single count of securities fraud in July, although the jury acquitted them of three additional charges. Hayward and Stern are expected to be sentenced in October.

Donald R. Foley II is represented in this case by Sullivan & Worcester LLP.

The case is USA v. Foley, case number 1:05-cr-00391-hb, in the U.S. District Court for the Southern District of New York.