

White Collar Group Of The Year: Kramer Levin

By **Cara Mannion**

Law360, New York (February 7, 2017, 4:15 PM EST) -- Kramer Levin Naftalis & Frankel LLP's white collar group notched victories in the courtroom and at the negotiating table over the past year that included persuading federal prosecutors to drop charges in one of the largest tax fraud cases in U.S. history, landing the practice a spot on Law360's 2016 White Collar Groups of the Year.

The firm's white collar team, composed of just 10 partners and 25 associates, took on mammoth, headline-making cases, like the insider trading suits against sports gambler Billy Walters and SAC Capital Advisors LP's former portfolio manager Michael Steinberg. Kramer Levin's willingness to take cases to trial and its deep bench of experienced trial attorneys are just two reasons why high-profile clients hire the firm, said Paul Schoeman, co-chair of its white collar defense group.



"We are a white collar group focused on defending people and companies at trial," Schoeman said. "We believe that our ability to try cases and win them is what draws clients to the firm, as opposed to white collar shops that are not really courtroom-focused practices."

The firm achieved a highly publicized win in October 2015 when federal prosecutors agreed to drop insider trading charges against SAC Capital's Steinberg, who was convicted in December 2013 and later sentenced to three and half years in prison on the grounds that he traded Nvidia Corp. and Dell Inc. stock on confidential information about upcoming earnings.

Barry Berke, co-chair of the firm's litigation department, said the U.S. Attorney's Office agreed to dismiss the charges after viewing his team's soon-to-be-filed brief for the Second Circuit. The firm had argued that Steinberg was vindicated by the circuit court's blockbuster Newman decision, which raised the bar on what evidence the government needs to bring in order to prosecute tippers and tippees of confidential information.

"This decision stands for the principle that people who are prosecuted for alleged inside information have to have a basis to know that the source of information itself was a corrupt source," Berke said.

Eric Tirschwell, co-chair of the firm's white collar group, said that this ruling changed the course of insider trading prosecutions, adding a hurdle that the government will have to overcome in future cases,

particularly when someone is a few levels removed from the tip's source.

Kramer Levin is no stranger to taking on high-profile insider trading cases like Steinberg's.

It is currently representing sports gambler Walters, who was accused of using insider tips from former Dean Foods chairman Thomas Davis to earn \$32 million in trading profits while avoiding some \$11 million in losses.

The case — which also ensnared pro golfer Phil Mickelson — includes allegations that a rogue FBI agent leaked details of the insider trading investigation to The New York Times and The Wall Street Journal.

Kramer Levin argued that the leak violated Walters' rights and was really a calculated tactic to revive the dormant investigation into Mickelson, Walters and Davis. Instead of stopping the press leaks, the move became "part of the government's investigative playbook," the attorneys said.

But the FBI argued on Jan. 30 that while the leaks were "unquestionably wrong and improper," Walters was not prejudiced.

The firm in August secured an important ruling in the case that denied Manhattan federal prosecutors' bid to halt discovery in the civil action. The judge said there was only "ambiguous" evidence supporting the government's notion that Walters would engage in witness tampering.

The case is set for jury selection in the oncoming weeks.

Kramer Levin also brokered a rare deferred prosecution agreement in November 2015 that essentially set former Deutsche Bank AG broker David Parse free from charges of conspiring with two convicted Jenkens & Gilchrist PC attorneys in a \$7 billion tax fraud scheme.

Parse was convicted in 2011 on two counts of tax fraud and ordered to pay \$190 million in restitution. But when this conviction was overturned on appeal in 2015, Parse approached Kramer Levin to represent him after seeing how former Deutsche Bank broker Raymond Craig Brubaker, Parse's then co-defendant and the firm's client in 2011, was the only defendant to be acquitted of all charges.

"I don't know whether that's ever happened before, that the same lawyers have represented two defendants back to back," Schoeman said.

Kramer Levin's victorious track record with Brubaker helped Parse secure the deferred prosecution deal, Berke said. The firm made a substantial presentation to the U.S. Attorney's Office detailing why it was confident prosecutors would lose the case based on the Brubaker results, he said.

Soon after, the U.S. Attorney's Office offered the uncommon deal, Berke said.

"It is very rare for indictments, certainly in white collar cases and certainly in a case that the government called the largest tax prosecution in history, to get dismissed," he said.

--Editing by Jill Coffey.