

White Collar Group Of The Year: Sheppard Mullin

By **Ed Beeson**

Law360, New York (February 3, 2016, 6:01 PM ET) -- When a tiny thrift bank in New York's Chinatown vowed to fight fraud charges brought by Manhattan's powerful district attorney Cyrus Vance Jr., it was Sheppard Mullin Richter & Hampton LLP that helped steer it to vindication following a four-month trial, an achievement that established the firm as having one of Law360's White Collar Practice Groups of the Year.



Sheppard Mullin's defense of Abacus Federal Savings Bank not only helped save the lender from certain doom, it also led to the first of two major trial losses Vance's office suffered last year. In June, a New York jury cleared Abacus and two of its senior employees of all wrongdoing in a case alleging they had sold hundreds of millions of dollars of fraudulent home loans to the mortgage finance giant Fannie Mae.

To Kevin Puvalowski, co-leader of Sheppard Mullin's white collar defense practice and Abacus' attorney throughout what ultimately was a five-year ordeal, the outcome of the trial showed it was a case that shouldn't have been brought in the first place.

"It was a dumb case. It was the wrong defendant. It was an unjust prosecution. We were able to convince the jury of that," Puvalowski said.

But even though it proved a slam dunk for the defense, the case didn't come without a big cost, he added.

"Even though we won, it significantly disrupted the bank's business for years and years to come," he said. "It cost them millions and millions of dollars in legal fees and loss of business ... The bank is just now getting back with Fannie Mae."

The case grew out of a matter involving a former loan officer named Ken Yu, who was discovered falsifying mortgage documents. While the bank fired him and others and reported the issue to

regulators after uncovering the matter, Puvalowski said, the issue morphed into a criminal probe of the bank by Vance, culminating in 2012 with 11 individuals and the bank itself being indicted. Meanwhile, eight others, including Yu, pled guilty.

The family behind Abacus, however, defied expectations in deciding to fight back. While other banks have pled guilty when facing criminal charges, Puvalowski said he believes Abacus is one of the only, if not the only, banks that has gone to trial in a criminal matter.

“They felt just, as a matter of principle, that they weren’t willing to take a guilty plea,” said Puvalowski. “The family was willing to invest millions of dollars out of their own pocket on principle. It’s pretty rare to find a client that is willing to stand up for principle to that degree.”

While Puvalowski had the bank’s support at his back, it was up to him and his team to win at trial.

He said he got a hand from the flaws in the government's case, which he added became apparent when prosecutors began calling witnesses.

“The trial went as well as you can possibly imagine the trial going,” he said. “Prosecution witness after prosecution witness, we just destroyed them on the stand.”

Not only did witnesses make basic errors or contradict the government on the stand, some had “significant skeletons in closets that the D.A.’s office didn’t know about,” Puvalowski said.

One sign the case was going well for the defense came around the first week of trial, Puvalowski noted, when the jury's foreperson asked, through the courtroom deputy, "Who is the victim here?" That was after a Fannie Mae expert had testified on behalf of the government, he added.

While Vance invoked the financial crisis during his remarks at a 2012 news conference to announce the charges, Fannie Mae wasn’t harmed by the alleged mortgage fraud, Puvalowski said.

A former deputy inspector general involved in overseeing the federal government’s financial crisis-era bailout program, Puvalowski said the Abacus case clearly looked designed to score the prosecutor’s office points.

“This case was brought because they thought they could spin it as a financial crisis case, and it was the opposite of a financial crisis case,” he said. “At the end of the day, this is what happens when you care more about the press conference than the proof.”

At the time the bank was acquitted, Vance’s office called the jury verdict “disappointing,” but said it was hopeful the prosecution and stronger oversight on the bank had eliminated fraud within Abacus’ loan department. It also heralded the eight guilty pleas it got in the case.

Months after Vance's office lost the Abacus case, it suffered another defeat when a New York state judge declared a mistrial in high-profile prosecution of three former Dewey & LeBoeuf LLP executives.

The Abacus victory was far from Sheppard Mullins’ only major success in 2015. Charles Kreindler, co-leader of the white collar defense team, was instrumental in securing a hard-fought nonprosecution agreement on behalf of Exide Technologies Inc., one of the world’s largest producers of batteries, the firm said.

"The Exide negotiation and result was by far the most incredible thing that I've been involved in," said Kreindler, himself a former federal prosecutor.

Hatched in March 2015, the agreement between Exide and federal authorities saw the company, which fell into bankruptcy in 2013, admit to illegally handling hazardous waste at its Los Angeles-area lead recycling plant and agree to a number of remedies that would cost up to \$133 million.

But getting to that point was far from an easy task. It took weeks and weeks of around-the-clock trying to get all parties — from prosecutors to environmental regulators to stakeholders in the company's bankruptcy to the governor of California — to consent to the deal.

In the end, Exide convinced the parties that without a nonprosecution agreement, there would be no way for the company to survive, and therefore no company left to pay for the cleanup, Kreindler said. That eventually got everyone on board, he said.

"I really think that shows exactly what we're capable of at Sheppard Mullin," Kreindler said. "We have the ability to do it all. Negotiate where needed, fight where needed."

--Editing by Kelly Duncan.

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