



Fraud charges against Teaneck accountant, partner dismissed

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A federal judge has dismissed the charges against a Teaneck accountant and his partner in a now-defunct payroll services company in an alleged scheme to divert more than \$3 million in client funds owed to the Internal Revenue Service.

In a 16-page opinion, filed earlier this month in Trenton, U.S. District Judge Joel A. Pisano concluded that the prosecution offered insufficient evidence to allow a rational jury to conclude that Andrew Muhlstock and Mark Holzwanger engaged in the fraud charged in a 2010 indictment.

The two men, who were also partners in a Manhattan accounting firm that shared offices with the payroll company, were tried last August on three counts of wire fraud in the scheme to defraud clients of Total Time Solutions, which handled payroll and tax withholding for New Jersey companies. Two other defendants involved in Total Time, Russell Speranza and Stephen Guthartz, both of New York, pleaded guilty shortly before the trial.

A jury convicted Holzwanger of Queens, N.Y., on two counts and acquitted him on one count, but was unable to reach a unanimous verdict in the case of Muhlstock of Teaneck.

In his opinion, Pisano said prosecutors failed to cite any evidence that Total Time was conceived as a fraudulent business, as charged in the indictment — a point which may have prejudiced the defendants' ability to prepare for trial and contributed to jury confusion. Prosecutors did, however, present evidence of wrongdoing by the company and by defendants other than Holzwanger and Muhlstock, the judge said.

The indictment alleged that between 2002 and 2005 funds withdrawn by Total Time from client accounts to purportedly pay payroll taxes to the IRS were instead used to pay Total Time's operating expenses and the payroll taxes of other Total Time clients.

Pisano said the evidence at trial suggested that Holzwanger and Muhlstock spent most of their time on their accounting practice, which was a client of Total Time itself, and they were not very involved in the day-to-day operations at the payroll company. He added there was a "dearth of evidence" showing that the scheme was related to either the charged wire transfers or to the two accountants.

"The government offered no evidence that these two defendants personally lied to any TTS clients in order to defraud them of their money," the judge wrote. "The evidence tended to show, rather, that the defendants became aware of late tax payments and client complaints in 2004 at the earliest, and were engaged in ultimately unsuccessful efforts to find investors or sell the business in order to infuse it with capital to resolve the problem."

Asked for comment on the judge's ruling, Rebekah Carmichael, a spokeswoman for U.S. Attorney Paul J. Fishman, said, "We agreed with the jury's conviction, and are reviewing our options."

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