

Jury In Brooklyn Judge's Trial Doesn't Hear Info About Agent

By **Pete Brush**

Law360 (November 30, 2021, 7:34 PM EST) -- A federal judge on Tuesday forbade counsel defending a state judge accused of obstructing a probe into New York City's Municipal Credit Union from telling jurors during trial openings about a disclosure by prosecutors that a government investigator was a customer at the troubled lender.

The information came to light two days before jury selection and opening statements before U.S. District Judge Lewis A. Kaplan in the Manhattan U.S. attorney's criminal case against Sylvia Ash, who had been the presiding justice in Brooklyn's commercial division prior to her 2019 arrest and suspension.

Ash, a former MCU board member, is charged with lying to federal investigators including LaVale Jackson, an agent who signed a complaint charging her in 2019, according to recent court filings. A subsequent four-count indictment charges Ash with two obstruction counts, a count of conspiracy to obstruct justice and a count of lying to investigators probing malfeasance at the MCU.

The agent had two relationships with the MCU — a roughly \$16,000 personal loan and a roughly \$7,000 savings account — in 2016, before Ash was charged, according to recent filings and statements in court.

Jackson is a "key witness" who will testify that Ash lied as the government investigated Kam Wong, the former MCU CEO now incarcerated for a \$10 million course of corruption while running the credit union, Ash's lawyer Carrie Cohen argued to Judge Kaplan in the morning.

Cohen called the recent disclosure of the MCU accounts "extremely prejudicial" and won a ruling from Judge Kaplan that prosecutors must quickly turn over more information related to the banking activity.

But Judge Kaplan said he would not allow Ash's team to mention the banking relationship during opening statements, which unfolded in the afternoon. He rejected Cohen's request that trial openings be delayed until the defense can get more information about what Cohen saw as the agent's potential bias.

"We don't even have the facts, Your Honor, to do a cross-examination," she said.

Prosecutor Eli Mark allowed that the government could have disclosed the information sooner than the eve of trial, but he asserted that the issue is not material because the dollars in question are not very large and because none of the information tends to exonerate Ash.

Judge Kaplan agreed in large part, saying, "Maybe a mistake was made — maybe not," and adding that there did not appear to be much more to it. However, the judge said that the issue could be revisited depending upon what information emerges in coming days.

But when Judge Kaplan initially said Cohen would be precluded from opening on that score, Cohen said, "That is up to me to decide. I do not believe that I should be precluded at all from opening on it."

Judge Kaplan countered that he has "discretion" to tell lawyers what they can and cannot argue — apparently at all times.

After a renewed objection on that score from Cohen in the 3 p.m. hour, opening statements began in front of a newly chosen, masked jury of 12 with six alternate jurors in a courtroom outfitted to guard against the dangers of COVID-19.

Prosecutor Alona Katz argued that in 2018 Ash wiped her mobile phone rather than handing it over to prosecutors investigating Wong and MCU.

"She went to an Apple store and had the entire contents of the phone wiped clean," she said.

Ash also signed bogus documents that suggested Wong's pay while he ran the credit union was legitimate, Katz said.

"We are here because the defendant obstructed justice," Katz said.

Cohen argued that, though she may have made "mistakes," Ash never lied. Ash transferred the contents of her mobile phone to another phone as opposed to wiping any phone — and text messages did not transfer, Cohen said.

"No lies, no cover-up, no crime," she said.

Cohen conceded that Ash, while sitting on the MCU board, signed a document related to Wong's compensation that turned out to be false. But, she said, that was because she trusted Wong.

"Wong duped Ms. Ash," Cohen said. "He lied to everyone, all the time, including Ms. Ash."

Mark also disclosed in the morning that the MCU is still under investigation by the Southern District of New York related to potential Bank Secrecy Act and anti-money laundering failures.

The MCU was placed into a conservatorship by the National Credit Union Administration in 2019 amid allegations of malfeasance under Wong's disastrous leadership and remains under active NCUA oversight today.

Ash's trial is expected to resume Wednesday morning.

Ash is represented by Carrie Cohen, Janie Buckley and Nathan Reilly of Morrison & Foerster LLP.

The government is represented by Eli Mark, Dan Richenthal, Jonathan Rebold and Alona Katz of the U.S. Attorney's Office for the Southern District of New York.

The case is USA v. Ash, case number 1:19-cr-00780, in the U.S. District Court for the Southern District of New York.

--Editing by Bruce Goldman.

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