

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

Criminal No. 22-10006-WGY

KRIS BORTNOVSKY and)
RYAN SHAPIRO,)

Defendants)

GOVERNMENT’S MOTION TO DISMISS WITHOUT PREJUDICE

Pursuant to Federal Rule of Criminal Procedure 48(a), the United States respectfully moves to dismiss the indictment in this matter without prejudice. The grounds for this motion follow below.

1. With the assistance of a cooperating witness, the government developed evidence that defendants Kris Bortnovsky and Ryan Shapiro engaged in insider trading by obtaining and trading on the basis of material non-public information (“MNPI”) regarding the financial performance and merger-and-acquisition activity of publicly traded companies. (Complaint, Docket No. 4).

2. The government arrested both Bortnovsky and Shapiro on a criminal complaint on December 8, 2021. (Docket No. 6).

3. On January 6, 2022, a grand jury for this District returned a two-count indictment charging Bortnovsky and Shapiro with conspiracy to commit securities fraud, in violation of 18 U.S.C. § 1349 (Count 1), and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff(a) (Count 2). (Docket No. 19).

4. The same day, the government charged the cooperating witness, David Schottenstein, who had agreed to plead guilty to an Information charging him with securities fraud conspiracy based on his obtaining MNPI from family members, and to cooperate in the government's investigation of Bortnovsky, Shapiro, and others. *United States v. Schottenstein*, 22-cr-10005 (DPW).

5. In February 2022, Schottenstein pleaded guilty to the Information before the Honorable Douglas P. Woodlock. (Docket No. 13, 17).

6. Pursuant to his cooperation agreement with the government, Schottenstein was expected to testify at Bortnovsky and Shapiro's May 2023 trial. The government and Schottenstein moved to delay his sentencing until July 2023—after the defendants' scheduled trial date—in anticipation of a sentencing that would follow his trial testimony. (Docket No. 54).

7. On November 29, 2022, Schottenstein filed a motion giving notice that he had “withdrawn from his cooperation agreement due to advice received from Defendant's psychologists and his therapist who have told Defendant and his counsel that cooperation against Mr. Shapiro, a friend and community member, would significantly exacerbate Defendant's existing mental health issues.” (Docket No. 57). Schottenstein also asked to be sentenced in March 2023, a request Judge Woodlock has since allowed.

8. In light of Schottenstein's unexpected withdrawal from cooperation and his decision not to testify against one of the defendants, the government respectfully seeks leave to dismiss the indictment without prejudice. The government's investigation is continuing and—if circumstances warrant—the government may request that a grand jury return any criminal charges, including against Bortnovsky and Shapiro, that the evidence supports. *See United States v. Raineri*, 42 F.3d 36, 43 (1st Cir. 1994) (“Customarily Rule 48(a) dismissals are without prejudice

and permit the government to reindict within the statute of limitations.”); *see also United States v. Suazo*, 2020 WL 974869 (D. Me. Feb. 28, 2020) (permitting Rule 48(a) dismissal without prejudice where government witnesses “abandon[ed] their signed plea and cooperation agreements”), *aff’d*, 14 F.4th 70 (1st Cir. 2021) (noting a rebuttable presumption of good faith for a Rule 48(a) dismissal).

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court give leave to the government to dismiss the indictment under Fed. R. Crim. P. 48(a).

Respectfully submitted,

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United States Attorney

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Date: December 5, 2022

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Seth B. Kosto
SETH B. KOSTO
Assistant U.S. Attorney

December 5, 2022