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Boutique Lawyer to Argue Salman in High Court

BNA Snapshot

- Appellate attorney Alexandra A.E. Shapiro poised to tell Supreme Court Oct. 5 her client shouldn't have been convicted of insider trading in *Salman v. United States*
- Dispute marks Shapiro's first argument before high court
- If justices accept Shapiro's argument, it will be her third victory in an insider trading case

ATTORNEYS



By Cameron Finch

Oct. 3 — Alexandra A. E. Shapiro will make her oral argument debut when the Supreme Court considers its first insider trading dispute in almost two decades Oct. 5.

Shapiro, who clerked for Justice Ruth Bader Ginsburg and has argued in all but three federal appeals courts, is no stranger to the Supreme Court, appellate argument or insider trading cases.

Her securities law work has played a pivotal role in narrowing the scope of insider trading prosecution, starting with the overturning of a computer company executive's conviction more than a decade ago. In the years since, Shapiro left a partnership at Latham & Watkins LLP to co-found a boutique litigation firm with a Columbia Law School classmate.

"There aren't that many women in her position—changing the laws—and in the securities industry in particular that bar is very much male-dominated, both on the legal and the business side," Noreen Kelly, of McGuireWoods LLP and a former colleague of Shapiro's at Latham, told Bloomberg BNA.

Insider Trading Guru

Shapiro graduated first in her class from Columbia University School of Law in 1991. She then clerked for Judge Stephen F. Williams of the D.C. Circuit and later Ginsburg. She worked for nine years at Latham before opening her own firm with law school classmate Cynthia S. Arato, whose intellectual property clients include Jay Z's Roc Nation.

Shapiro's practice, which focuses primarily on white-collar criminal cases, led her to her current work in securities appeals.

The case, the legal theories and briefs in Shapiro's first insider trading case, *United States v. Cassese*, were her "brainchild," Kelly said. Since *Cassese*, "it has been so interesting to watch her trajectory in this area of the law," Kelly said.

More recently, Shapiro was co-counsel for former Level Global Investors LP manager Anthony Chaisson in the landmark Second Circuit case *United States v. Newman*. The ruling—which tossed Chaisson's conviction—established that prosecutors must show that the defendants knew the information was disclosed by an insider in exchange for a personal benefit.

"I would never bet against her, even in cases with difficult facts," Mark F. Pomerantz of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York told Bloomberg BNA Sept. 30. Pomerantz was co-counsel with Shapiro on the *Newman* case.

Shapiro is currently counsel in four federal insider trading cases, one of which has a pending petition for Supreme Court review.

Salman

In what could be her third acquittal in an insider trading case, Shapiro will tackle the issue of personal benefit liability in *Salman v. United States*.

Shapiro will argue that a corporate insider who conveys material, nonpublic information has to do so for a concrete monetary benefit for the defendant tippee to be liable for insider trading. Her client, Bassam Salman, was convicted for trading on inside information obtained from a relative of the brother of a Citigroup executive, the original source of the tip.

On appeal to the Ninth Circuit, Salman argued that the Citi executive didn't receive a personal benefit for tipping his brother, but the appeals court didn't agree. Splitting from the Second Circuit's Newman decision, the Ninth Circuit ruled that an "indeterminate psychological benefit" was sufficient for insider trading liability.

The justices agreed to review the Ninth Circuit's decision affirming Salman's conviction three-and-a-half months after declining to review the Second Circuit's Newman decision.

The high court's decision in Salman's case will resolve an issue central to the federal crackdown on insider trading over the past eight years: Must the source of the information have received a tangible monetary benefit for disclosing it?

Uncertainty over the nature of the personal benefit required for insider trading liability, a judicially defined concept, has led to calls for Congress to clarify the issue. According to Salman, the Ninth Circuit's standard is so flexible it effectively would allow prosecutors, not Congress, to define the crime—a violation of separation-of-powers principles.

Upholding the decision would eliminate the personal benefit requirement, replacing it with the broad prohibition against insider trading that the Supreme Court repeatedly has rejected, Salman contends.

However the justices resolve the issue, their decision will have a major impact on insider trading enforcement for years to come.

Electoral Reform

Shapiro's first Supreme Court oral argument happens to coincide with the height of the election campaign. Electoral reform is a "passion of mine," Shapiro told Bloomberg BNA Sept. 29.

Shapiro first considered the issue in 2008, while working at a large New York law firm. A client of hers, political reform activist Peter Ackerman, sat on the board of Unity08, an organization looking to fund third-party candidates.

When a district court upheld a Federal Election Commission requirement limiting the political organization's campaign contribution limits, he asked Shapiro to help him with the appeal. Shapiro's work on the case overturned the ruling and established that a political organization formed to seek a bipartisan "unity" presidential ticket was not required to abide by a \$5,000 campaign contribution limit.

"She is by far the most intellectually gifted appellate lawyer I have ever had the honor of knowing," Ackerman told Bloomberg BNA Sept. 30.

Last year, Shapiro filed a lawsuit designed to open presidential debates to third-party candidates. She said the Democratic and Republican parties have "stealthily rigged our elections by creating a series of rules to squelch competition" in a July 2015 op-ed in the *Washington Times*.

Shapiro's oral argument will take place the morning after the vice presidential debate, which she may skip in favor of a good night's sleep.

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