

Ex-Katten Atty Conviction A Cautionary BigLaw Tale

By **Stewart Bishop**

Law360, New York (January 2, 2018, 9:09 PM EST) -- The conviction of former Katten Muchin Rosenman LLP partner Evan Greebel for conspiring with “Pharma Bro” Martin Shkreli to defraud Retrophin Inc. and its investors is a harsh reminder to lawyers of the importance of knowing when to walk away from a dangerous client, experts said Tuesday.

After roughly 2 1/2 months of trial, a jury on Dec. 27 convicted Greebel of conspiracy to commit securities fraud and conspiracy to commit wire fraud over an alleged scheme to pay off defrauded investors in Shkreli’s MSMB hedge funds with Retrophin cash and stock using purportedly sham consulting and settlement agreements, as well as another ploy to control the then-pharmaceutical startup’s stock price and trading volume.

Greebel’s fall from a onetime promising corporate attorney for Katten and later Kaye Scholer LLP to convicted criminal serves as a lesson for lawyers that they need to be ready to let go of even very lucrative client engagements when red lines are crossed, said former federal prosecutor and white collar attorney Patrick Cotter of Greensfelder Hemker & Gale PC.

“You have to wake up every day and say to yourself, ‘I’m willing to be fired before I do something unethical,’” Cotter said. “The day will come when someone or something will pressure you to do something wrong.”

Greebel served as outside counsel for Retrophin, but prosecutors say he disregarded his client’s interests in favor of helping Shkreli defraud the company out of millions of dollars worth of cash and stock, all in order to maintain access to the rich stream of attorneys’ fees that in turn boosted his own compensation at Katten.

Todd Haugh, an assistant professor of business law and ethics at Indiana University’s Kelley School of Business, said Greebel’s conviction shows the dangers of an attorney misunderstanding who it is they



Evan Greebel, pictured exiting federal court in December 2015, was tried separately from his notorious client. (Getty)

actually represent.

“That can often happen when you have a particularly powerful or overbearing individual as your client contact,” Haugh said. “Here, it seems like the attorney lost sight of who the client was, which is the company. That happens more often than you might imagine, particularly when the relationship is controlled by a person, even though it’s the company that is the true client.”

Greebel’s defense team, for their part, argued that he was deceived by the charismatic Shkreli and that the prosecution sought to tie the BigLaw lawyer to Shkreli’s misdeeds via “guilt by representation.”

An attorney for Greebel, Randy Mastro of Gibson Dunn & Crutcher LLP, told Law360 the guilty verdict is “shocking and deeply disturbing” not only for Greebel, but for every lawyer that practices law at a big law firm.

“This should send shockwaves throughout the legal community, that one of us could be convicted for doing what lawyers do every day on behalf of their corporate clients,” Mastro said.

Greebel documented settlement agreements with MSMB and Retrophin investors in the face of litigation threats, which is something Mastro said attorneys “do every day.”

A spokesman for the U.S. Attorney’s Office for the Eastern District of New York, which prosecuted Greebel’s case, declined to comment.

Shkreli is behind bars as he awaits sentencing later this month following his conviction of securities fraud and conspiracy. He was acquitted, however, on the charge that he looted the assets of Retrophin to pay off conned investors in his MSMB Capital Management and MSMB Healthcare Management hedge funds.

Retrophin ousted Shkreli as CEO in late 2014. Stephen Aselage, who was Retrophin’s first CEO and took the reins again after Shkreli was forced out by the company’s board of directors, testified at Greebel’s trial that he and others on the board had become increasingly concerned about Shkreli’s behavior as CEO, including his use of Retrophin cash to fund an in-house hedge fund.

Jurors also heard testimony from other partners at Katten that Shkreli was difficult to manage and saw evidence that Shkreli sometimes berated Greebel and was resistant to some of his counsel.

Haugh said attorneys should withdraw from representation when it becomes clear that a client isn’t going to follow their advice, regardless of how much they’re paying.

“There’s often a feeling by attorneys that if they lose a bit of business, it’s the end of the world,” he said. “It certainly can have an impact on their personal finances, but the downside is so high.”

Robert A. Mintz, a former federal prosecutor and the head of the white collar group at McCarter & English LLP, added that attorneys must be cognizant of how third parties may be impacted by advice you’ve given your client.

“If you have any inkling that your client may be making misrepresentations to third parties or omitting material facts, that should sound an alarm and put you in position of potentially having to remove yourself from the representation,” Mintz said. “Which is something that lawyers hate to do for obvious

reasons, but the alternative is sometimes the situation that Mr. Greebel found himself in, which is far worse.”

When confronted with such a problem client, Sarah M. Hall of Thompson Hine LLP, a former prosecutor with the fraud section of the Department of Justice Criminal Division, said the best course of action is to seek out the counsel of others in your firm.

“There are risks that accrue to your partners, so the actions you take can have impacts on others at your firm,” Hall said. “You don’t want to make very complicated decisions like that in a vacuum. It’s good business sense, it’s good risk management, to seek the counsel of other partners in your firm when you’re dealing with very difficult decisions about clients.”

Michael Weinstein, a former federal prosecutor and head of the white collar group at Cole Schotz PC, said it’s best to always maintain a healthy dose of skepticism and independence from clients, while balancing that with listening and advocating aggressively on their behalf.

“You should always question the motivation and justification of a client in a healthy way so you can independently determine without the influence of the relationship and the fees that are likely to come what the client’s objectives and next steps are likely to be,” Weinstein said.

The bottom line, Hall said, is that attorneys need to remember they are not above the law.

“The Eastern District and the Southern District are obviously some of the most aggressive districts in the country when it comes to white collar crime, and I don’t think they will give you any special dispensation or treatment because you have an Esq. after your name,” Hall said.

--Editing by Philip Shea and Aaron Pelc.