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## Charges Against BigLaw Atty Show Vetting Difficulties

By **Jody Godoy**

Law360, New York (May 15, 2017, 8:53 PM EDT) -- Alleged improper trading on client information got a former Foley & Lardner LLP partner fired last year, but the firm that hired him next didn't find out until he was charged — showing how hard it can be to unearth a lateral hire's problematic conduct.

Tampa attorney Walter "Chet" Little was **charged on Thursday** with trading stock ahead of major events at Foley & Lardner client companies for whom he had never done legal work, and sharing tips with a neighbor who was also charged. Within about a month of the firm firing Little in 2016, he went on to get a job at Bradley Arant Boult Cummings LLP.

Little was released on \$500,000 bail last week. His attorney previously told Law360 that he maintains his innocence. In addition to criminal charges, Little and the neighbor face a civil proceeding by the U.S. Securities and Exchange Commission.

Without naming Little, Foley & Lardner said in a recent statement that it had done an internal investigation in June 2016 after learning of a partner's "trading activity" that resulted in the partner being shown the door and the firm alerting authorities. But when Bradley Arant hired Little in July 2016, chairman and managing partner Beau Grenier said the firm knew nothing of the alleged misconduct despite a thorough check.

"We performed significant due diligence on Mr. Little like we do on all laterals," Grenier told Law360. Grenier added that the firm "did not learn or know of any misconduct by or any investigations of Mr. Little prior to hiring him" or at any point before the day charges came down.

Florida bar spokeswoman Karen Kirksey confirmed on Monday that the bar has no open complaint file on Little. And he has no disciplinary record in the bar's public information system, which displays formal findings by the state's Supreme Court dating back 10 years.

Did someone at Foley & Lardner have an obligation to report Little's conduct to the Florida bar? It depends on what they actually knew.

Florida ethics rules say a lawyer must alert the bar when that person knows another lawyer violated the rules in a way that "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer."

Brian Tannebaum, an attorney who represents lawyers at Miami-based Bast Amron LLP, said that if a firm in Foley & Lardner's situation has actual knowledge of criminal conduct, it should raise a red flag.

"If the firm was my client I would say, do you have any evidence, written or otherwise? If so, then we have to report it," Tannebaum said.

While the bar rules don't speak specifically to trades on inside information about a colleague's clients, they prohibit disclosing client information to others and committing criminal or other conduct that smacks of dishonesty.

Joy Bruner, assistant ethics counsel with the Florida bar, would not comment on any specific case but confirmed that the bar generally advises firms "that all the lawyers in the firm owe all the clients of the firm a duty of confidentiality."

After the bar receives a complaint, Tannebaum said, it could take up to a month to open a disciplinary file and send notice to the lawyer under scrutiny. A lawyer who receives that notice is then required to tell their firm about the complaint, and Tannebaum said he usually counsels clients to reveal the complaint itself.

Now that Little has been charged with felonies, he is within a 10-day window to report the charges to the bar.

Foley & Lardner spokesman Daniel Farrell declined to comment for this story, but reiterated a statement that the firm has "zero tolerance for actions that violate our core values and the trust our clients place in us." Attorneys for Little did not reply to a request for comment.

It's not clear from the firm's public statement on the matter whether Little was terminated from Foley & Lardner or allowed to resign. Either way, Bradley Arant would probably have had no way to know that except to ask Little himself.

Ed Harnden, co-managing partner at employment firm Barran Liebman, said there's a real litigation risk for employers that release any information beyond a past employee's dates of employment.

"We recommend you don't give any information. Certainly you don't want to say there's a possible crime," Harnden said.

Releasing derogatory facts about a former attorney could get a firm sued for defamation, Harnden said. Providing glowing reviews for some ex-employees but staying silent on others or even confirming that an attorney was terminated as opposed to leaving voluntarily also creates risk.

Harnden said the playbook can create a difficult situation for firms looking to avoid hiring attorneys with a disciplinary record at a prior firm. "It's frustrating, but it's a frustration you have to live with," Harnden said.

After all, criminal allegations cast a long shadow over a person's life whether they are proven or not. Former Diamondback Capital Management LLC manager Todd Newman's name is still synonymous with the insider trading case against him, despite the **landmark 2014 decision** that overturned his conviction and found its legal basis invalid.

In a recent appearance on a panel at the New York Bar Association, Newman told an audience of defense lawyers that he still hasn't shaken the anxiety that came with fighting his charges and hasn't re-entered the job market.

"No one would hire me on Wall Street, that's for sure," Newman said. "You're kind of bringing in a guy that the government probably still wants, is the assumption."

For a firm in Foley & Lardner's shoes, the investigation into Little would have also been

part of the calculus about what to disclose, said Katherine Lemire, a former Manhattan federal prosecutor who leads compliance and investigations firm Lemire LLC.

Lemire said it's possible that after Foley & Lardner dropped a dime on Little, the firm may have wanted to avoid releasing information that could still be part of an active investigation.

"In general, companies do not have an affirmative duty to prosecutors to sit on information, but they typically do want to appear cooperative," Lemire said.

Lemire said a firm in Bradley Arant's position would want to do its own internal investigation to make sure Little didn't continue his alleged conduct after his hire.

Little is not the first lawyer to be accused of trading with secrets learned on the job.

In a similar case, a former clerk at Simpson Thacher & Bartlett LLP admitted to **digging up tips** in an internal system using search terms like "merger agreement" and "due diligence." The ex-clerk is scheduled to be released from prison in 2020.

In 2012, a judge put away a former mergers and acquisitions lawyer for a **record 12 years** after he pled guilty to a yearslong scheme to profit from nonpublic information he learned while working at multiple BigLaw firms.

And just two months ago, a former Hunton & Williams LLP patent attorney was convicted on tipping an investment adviser on an acquisition by Pfizer Inc. He is currently **contesting the verdict**, arguing the evidence at trial did not support a conviction.

The criminal case is U.S. v. Little et al., case number 17-mg-03408, and the civil case is Securities and Exchange Commission v. Little et al., case number 1:17-cv-03536, both in the U.S. District Court for the Southern District of New York.

--Editing by Mark Lebetkin and Catherine Sum.