

## **TSX-V's Global hears client Elgindy plead for leniency**

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Amr (Anthony) Elgindy, a notorious short seller who conducted many of his trades through Art Smolensky's Vancouver-based Global Securities Corp., says his 11-count conviction for racketeering, securities fraud and extortion should only bring a four-year prison term at most.

Mr. Elgindy was arrested in May of 2002 and convicted on 11 counts of a 32-count indictment last January following a lengthy jury trial that kicked off on Nov. 1, 2004.

Six other defendants, most of whom pled guilty, have also been convicted in the case.

In addition to Mr. Elgindy, co-defendant Jeffrey Royer, a former FBI agent, was convicted of racketeering.

Derrick Cleveland, a former broker and ex-convict, copped a plea to racketeering and testified against co-accused Mr. Elgindy and Mr. Royer.

Robert Hansen, who operated a website for Mr. Elgindy, and trader Donald Kent Terrell both pled guilty to conspiracy to commit securities fraud and co-operated with the government.

Hedge fund manager Jonathan Daws also pled guilty to conspiracy to commit securities fraud.

Mr. Royer's girlfriend and former FBI agent Lynn Wingate, who was also charged with racketeering and securities fraud, eventually pled guilty to obstruction of justice.

Mr. Elgindy, the central figure in the case, is scheduled to be sentenced on March 6. He will also be sentenced on a separate conviction relating to his April 17, 2004, attempt to board an airplane using fake identification while on pretrial release.

A contentious presentence report (PSR), which is not available as part of the public record, suggests that Mr. Elgindy should receive a life sentence.

According to Mr. Elgindy's lawyer Brian H. Berke of Kramer Levin Naftalis & Frankel, the PSR recommendation of a life sentence is "unfathomably severe," an "outrage," "off the chart" and "based on a number of glaring and fundamental legal and factual errors."

In a 117-page sentencing memorandum filed on Dec. 23, 2005, Mr. Berke argues that a correct application of the sentencing advisory guidelines indicates an appropriate

sentence range of 41 months to 51 months on the securities fraud case and two months to eight months on the airport case.

Mr. Berke urges the court to sentence Mr. Elgindy to a total of no more than 43 months in prison.

## **Background**

A great deal has been written about 38-year-old Mr. Elgindy, by most accounts a colourful character, particularly during his time as an outspoken, larger-than-life short seller with a significant Internet following. What follows is a very brief sketch of Mr. Elgindy's background.

Born in Egypt in 1967, something that would factor in subsequent events, Mr. Elgindy moved to the U.S. with his family in 1970. His parents became naturalized U.S. citizens in 1976, which conferred U.S. citizenship upon Mr. Elgindy and his younger Egyptian-born brother. Another brother and sister were subsequently born in the U.S.

After moving to the U.S., both of Mr. Elgindy's parents continued their education. His father worked as a draftsman while earning a PhD in engineering and his mother, who already had a doctorate from the University of Cairo, continued to study medicine to become a licensed physician.

Mr. Elgindy attended public schools, graduating from high school in 1985. While his early years were at least superficially largely unremarkable, Mr. Elgindy reportedly had a physically abusive father and suffered bouts of depression. The summer after graduating from high school he attempted to overdose on Valium and was treated in hospital for two weeks.

He went on to attend the University of Southern California, majoring in bioengineering, until 1987 when he enrolled at San Diego State University and changed his major to microbiology.

While attending San Diego State, Mr. Elgindy earned extra money as a car salesman, quickly becoming the top salesman at the largest Corvette dealership in San Diego. By 1988, however, 20-year-old Mr. Elgindy found a more interesting calling. He became a stockbroker.

Mr. Elgindy made his "Wall Street" debut with Blinder Robinson & Co., a notorious boiler room known for shamelessly flogging stinky penny stocks to unsuspecting clients. Shortly after Mr. Elgindy joined the firm, Blinder Robinson imploded in the wake of a devastating report on CBS's 60 Minutes.

Following the Blinder Robinson debacle, Mr. Elgindy moved briefly to JW Grant & Associates before signing on with Thomas James Associates in the spring of 1989.

By January of 1992, Mr. Elgindy was hooked up with another bucket shop, this time as co-owner of Armstrong McKinley & Associates.

Armstrong McKinley soon began to unravel and, overwhelmed by concerns over the firm's dubious business practices, Mr. Elgindy suffered a breakdown. He shuttered the brokerage's San Diego operation in June of 1993 and checked himself into a hospital where he was diagnosed with bipolar disorder and severe depression.

While reportedly disabled by his condition from June of 1993 to January of 1995 and receiving disability insurance payments, Mr. Elgindy worked for a couple of months at Bear Stearns in 1994 and then spent five months at Barron Chase. He did not bother reporting his employment to the insurance company that was cutting his disability cheques, something that would come back to haunt him.

In 1995, Mr. Elgindy experienced an epiphany of sorts, determining that the clients he served during his six years as a broker would have fared very well shorting the stocks he had been flogging. With that in mind, Mr. Elgindy founded Key West Securities, a brokerage firm geared to shorting overblown promotions and outright scams.

Over the next few years, Mr. Elgindy's Key West Securities reportedly did quite well shorting various stocks, garnering some national media attention along the way. The firm also eventually caught the attention of regulators, particularly with respect to Mr. Elgindy's shorting of Saf T Lok Corp., a stinker he sniffed out in 1997.

During the same period, Mr. Elgindy co-operated with the Department of Justice and the U.S. Securities and Exchange Commission (SEC) in the prosecution of a number of his former business associates and other stock swindlers.

In 1998, Mr. Elgindy put his Key West Securities operation to bed and started Pacific Equity Investigations, to sniff out short selling opportunities as a private trader and researcher.

At the same time, Mr. Elgindy started a thread titled "Dear Anthony" on a popular Internet stock chat site called Silicon Investor, attracting a large following as he blasted away at stock scams and overvalued companies.

By early 2000, Mr. Elgindy was very well known as an entertaining, sometimes obnoxious and successful short seller. He was the subject of several newspaper and magazine articles, appeared in a segment on ABC's 20/20 and was featured in a number of books.

Capitalizing on his near-celebrity status as a short-selling Internet stock guru, Mr. Elgindy started a subscription-based website, AnthonyPacific.com, as well as a free public site, InsideTruth.com.

AnthonyPacific.com drew about 300 paying members who anted up approximately \$400 per month to access the site. (All amounts are in U.S. dollars unless otherwise noted.)

As those events were unfolding, Mr. Elgindy was faced with a far less auspicious development.

In 1999, Mr. Elgindy was indicted for fraud in Texas in connection with receiving disability insurance payments while employed by Bear Stearns and Barron Chase in 1994 and 1995.

He pled guilty in early 2000 to one count of mail fraud involving \$55,000 in fraudulently obtained disability payments. While Mr. Elgindy reportedly did not expect to serve any jail time, in June of 2000 he was sent to the slammer for four months, followed by four months of home detention and three years probation.

When he was released from prison in October of 2000, Mr. Elgindy picked up where he had left off, even managing to work the fraud conviction into his pitch about being a bad guy turned good.

Alas for Mr. Elgindy and some of his associates, including AnthonyPacific.com members Mr. Cleveland and then FBI agent Mr. Royer, more unsettling developments were in the offing.

In May of 2002, Mr. Elgindy and several associates including Mr. Cleveland and Mr. Royer, who left the FBI in December of 2001, were arrested and charged with securities fraud. Ms. Wingate, then still an FBI agent, was also arrested.

Among other things, the grand jury indictment alleged that Mr. Elgindy used confidential law enforcement information illegally obtained from Mr. Royer while he was an FBI agent to further his fraudulent short selling schemes. He was also charged with extorting stock from company insiders in exchange for dropping his shorting activities.

Mr. Elgindy's May 22, 2002, arrest along with two corrupt FBI agents, one of whom had left the law enforcement agency just five months earlier, was headline news. The short seller made headline news again two days later in the wake of his bail hearing.

At a May 24, 2002, detention hearing in San Diego, Calif., Assistant U.S. Attorney Ken Breen of the Eastern District of New York argued that Mr. Elgindy was a flight risk and should be denied bail.

During the course of his arguments, Mr. Breen made the stunning allegation that a parallel investigation indicated that Mr. Elgindy might have been tipped off about the Sept. 11, 2001, terrorist attacks on the World Trade Center and the Pentagon.

In part, Mr. Breen's allegation turned on a broker's report that Mr. Elgindy, remarking that the market was going to crash, had tried to liquidate two of his children's trust accounts late on Sept. 10, 2001. As it turned out, the accounts were not liquidated.

"But certainly something that could be taken from his attempt in that regard is that perhaps Mr. Elgindy had pre-knowledge of the September 11th attacks and, rather than report it, he was attempting to profit from that information," Mr. Breen told the court.

The San Diego judge dismissed the notion that Mr. Elgindy had any foreknowledge of the terrorist attacks, but he did determine that the short seller was a flight risk and ordered that he be kept locked up.

No charges stemming from Mr. Breen's parallel investigation were ever brought against Mr. Elgindy, but with the collective U.S. psyche still raw and reeling over 9/11, the prosecutor's shocking allegation captured headlines and then took on a life of its own, enveloping several of the Egyptian-born short seller's relatives.

As an aside, following Mr. Elgindy's trial, Mr. Breen went into private practice as a partner at Fulbright & Jaworski, specializing in white collar criminal defence. Mr. Breen's successful prosecution of Mr. Elgindy and Mr. Royer was featured in his biographical information when he joined the firm last October, as was his role as Co-ordinator of the Capital Markets Unit of the Terrorist Financing Task Force.

Judge Raymond Dearie of the U.S. District Court for the Eastern District of New York, which claimed jurisdiction in the case, revisited the issue of bail a few months later.

On Sept. 10, 2002, Mr. Elgindy was released on bail after posting a \$2.5-million bond. The conditions of his release included restrictions on his movements while in New York and wearing a monitoring ankle bracelet while in San Diego.

Mr. Elgindy's bail was revoked and he was sent back to jail following a peculiar incident on April 17, 2004.

After notifying New York authorities of his plan to travel to his home in San Diego where he would be fitted with a monitoring ankle bracelet, Mr. Elgindy attempted to board a plane two days before his reported departure date using false identification in the name of Herbert Manny Velasco.

Security officials at MacArthur Airport questioned Mr. Elgindy about his identity and occupation after they found approximately \$25,000 in cash, \$30,000 in jewelry and four cellphones in his luggage. He lied to the officials, but his identity was soon established and he was sent back to jail where he remains.

By the time the dust settled and a second superseding indictment issued, Mr. Elgindy faced 32 counts including racketeering, various securities fraud charges and extortion in addition to the separate indictment relating to the airport incident.

The jury trial before Judge Dearie opened on Nov. 1, 2004, and wrapped up with Mr. Elgindy's conviction on 11 counts on Jan. 24, 2005. Co-defendant Mr. Royer was convicted on nine of 15 counts.

### **Canadian connections**

As previously reported by Stockwatch, there were a number of Canadian connections to the case.

Among other things, former high-flying Micromem Technologies Inc., which traded on the sleepy Winnipeg Stock Exchange of all places, was one of the stocks U.S. prosecutors claimed that Mr. Elgindy shorted, making \$272,297.

He also shorted Nano World Projects Corp., a promotion run by Howe Streeters Robert Papalia and David Hunter that resulted in market manipulation prosecutions in both Canada and the U.S. Mr. Elgindy reportedly made \$45,270 as Nano World plunged from \$24.50 to \$5.50 per share between April 11 and July 6, 2000.

Mr. Elgindy also sniffed out and shorted Freedom Surf Inc., another U.S. market manipulation in which convicted fraudster Alan Wolfson used brokerage accounts at Canaccord Capital Corp., Union Securities Ltd. and Rampart Securities Inc., all evidently innocent Canadian conduits, to fraudulently run the stock price up to \$40 per share.

The short seller reportedly notched a profit of \$40,452 on his Freedom Surf trades.

Perhaps of more general interest to Canadian market observers, Mr. Elgindy and many of his AnthonyPacific.com members, including several of his convicted associates, found Vancouver brokerage firms accommodating, particularly for shorting stocks trading on the OTC Bulletin Board.

According to testimony and evidence presented during the trial, many AnthonyPacific.com members used Vancouver-based Pacific International Securities Inc., Union Securities Ltd. or Global Securities to execute trades.

Neither the Vancouver brokerage firms nor any of their representatives were named in the case, nor was there any suggestion that they were anything other than innocent conduits legally executing trades on behalf of their clients.

Apparently Global Securities was particularly popular, with founder Mr. Smolensky being the go-to guy for Mr. Elgindy, who had his Vancouver accounts frozen following his arrest, and several of his associates including ex-convict Mr. Cleveland.

Mr. Smolensky reportedly knew Mr. Royer, too. Indeed, during the trial there was testimony and evidence that Mr. Smolensky met Mr. Royer at a Las Vegas party thrown for members of AnthonyPacific.com in May of 2001.

The evidence included a photograph of Mr. Smolensky taken at the Las Vegas shindig where Mr. Royer was introduced as an FBI agent.

Several of the partygoers, including a woman identified as a Global Securities representative named Carol, were photographed with Mr. Royer's FBI business card plastered to their foreheads.

Moreover, in an interesting bit of testimony from the prosecution's key witness, Mr. Cleveland told the court that Mr. Smolensky brought a couple of shorting prospects, Metropolitan Health Networks Inc. (MDPA) and TTR Technologies Inc. (TTRE), to his attention.

"Did Mr. Smolensky ask you to do anything?" prosecutor Mr. Breen asked.

"On both of the stocks he asked me to have Jeff (Royer) run them and see if anything came back on them," Mr. Cleveland testified.

According to Mr. Cleveland, Mr. Royer obliged, performing searches on the two companies through law enforcement databases.

Mr. Cleveland went on to testify that Mr. Royer told him that there were organized crime connections to both companies.

When asked what he did with that information, Mr. Cleveland told the court that he passed it on to Mr. Smolensky and two members of AnthonyPacific.com, but did not tell Mr. Elgindy.

According to Mr. Cleveland, Mr. Elgindy was "furious" when he found out about TTR Technologies and, in particular, that the information was not shared with him.

"He asked me why I didn't tell him about it and I told him that Art Smolensky had specifically told me when he gave me the stock not to give it to Tony and, so, I followed Art Smolensky's instructions and Tony exploded and said, 'Art Smolensky specifically told you not to tell me?'" Mr. Cleveland testified.

"I said yes, he did," Mr. Cleveland continued. "He's like, 'All right.' Hung up."

"Was that true, is that what Smolensky said?" Judge Dearie interjected a question.

"Yes," Mr. Cleveland replied.

Mr. Cleveland went on to acknowledge that he traded on the confidential law enforcement information obtained from Mr. Royer, but there is nothing to suggest that Mr. Smolensky traded on that information or was involved in any misconduct at all.

Moreover, Mr. Smolensky, through his lawyer Howard Shapray of Shapray Cramer, takes issue with at least some of Mr. Cleveland's testimony.

Mr. Shapray, a well known Vancouver lawyer with a reputation for being a very able and fierce litigator, contacted Stockwatch on Jan. 13 after Mr. Smolensky had twice been invited to offer comments regarding Mr. Cleveland's testimony.

The sometimes bombastic Mr. Shapray has represented Mr. Smolensky in a number of matters including a libel suit against Southam Inc., publisher of The Vancouver Sun, after the newspaper prominently published a photograph of Mr. Smolensky in a May 24, 2002, story about the arrest of Mr. Elgindy and his co-accused.

Among other things, Mr. Shapray claimed that the photograph juxtaposed with the headline, "Broker Arrested, Charged," gave a false and misleading impression that Mr. Smolensky and Global Securities were key targets in the high-profile case and the story constituted an "attempt to smear Mr. Smolensky's character by falsely linking him with the alleged fraudulent activity."

Mr. Shapray is also representing Mr. Smolensky in a regulatory proceeding filed by the British Columbia Securities Commission (BCSC) on Sept. 11, 2002.

The BCSC proceeding against Mr. Smolensky, which has still not come before a hearing panel, involves 1997 trading in Trooper Technologies Inc., now known as Stream Communications Network & Media Inc.

Stockwatch will review the history of Mr. Smolensky's Trooper troubles, which are unrelated to the prosecution of Mr. Elgindy, in a separate article.

In his Jan. 13 letter to Stockwatch on behalf of Mr. Smolensky, Mr. Shapray acknowledged that his client is aware of the U.S. case against Mr. Elgindy and his co-accused.

"In fact, Global co-operated with law enforcement in relation to the matter," Mr. Shapray advised.

Indeed, it is clear from the court record that Global's co-operation, including the production of account information and trading records, played a very significant role in the case.

After offering a caution about defamatory statements, Mr. Shapray went on to remark that "it is our impression that what you say Mr. Cleveland spoke about was neither the subject of any indictment nor was it corroborated by the evidence of any other witness, including the defendants who testified."



Given the context, it is likely that Mr. Shapray, who is generally quite precise, is referring specifically to Mr. Cleveland's testimony about communications with Mr. Smolensky regarding TTR Technologies and Metropolitan Health.

As suggested by Mr. Shapray, no other witness corroborated Mr. Cleveland's claims about Mr. Smolensky bringing those two companies to his attention or asking him to have Mr. Royer provide confidential law enforcement information about them.

More broadly, however, the activity described by Mr. Cleveland -- Mr. Royer accessing confidential law enforcement information and passing it on to people who traded on that information -- was central to the indictment and conviction of Mr. Elgindy and several of his associates.

Moreover, setting aside the uncorroborated testimony about Mr. Smolensky, corroboration was provided for significant aspects of Mr. Cleveland's claims about TTR Technologies and Metropolitan Health.

For example, Mr. Terrell, one of the people Mr. Cleveland said he passed the information along to and who copped a plea in the case, testified that he did receive and trade upon the information about TTR Technologies.

Further, according to the testimony of William Long, an FBI information technology specialist who audited Mr. Royer's access to confidential law enforcement databases, Mr. Royer indeed ran searches on TTR Technologies and Metropolitan Health.

In any event, Mr. Shapray claims that Mr. Cleveland's specific testimony about communications with Mr. Smolensky regarding TTR Technologies and Metropolitan Health is substantively false.

"As to any (sic) the truth of any suggestion that Mr. Smolensky asked Mr. Cleveland to ask Mr. Royer to provide confidential information on the two stocks you mentioned, that is denied," Mr. Shapray wrote.

"Further, the suggestion that Mr. Cleveland passed on confidential law enforcement information to Mr. Smolensky at Mr. Smolensky's request is also false," he continued.

Mr. Shapray also had a few things to say about the Las Vegas party for AnthonyPacific.com members in May of 2001, remarking that "while Mr. Smolensky did meet Mr. Royer at a social event, it would (be) incorrect and disparaging to describe Mr. Smolensky as a 'partygoer.'"

"The meeting was serendipitous, as I believe that Mr. Smolensky had no prior knowledge that Mr. Royer would be present," the lawyer continued. "At the time, Mr. Smolensky doubted that Mr. Royer was truly an FBI agent as, by his recollection, the so-called business cards that were circulated appeared anything but official looking.

"As to the conduct of a woman who was photographed with Mr. Royer's card stuck to her forehead, while this may well have happened, Mr. Smolensky was aghast at such a (sic) juvenile conduct which caused Mr. Smolensky to further doubt that Mr. Royer was indeed a federal agent.

"I point out that Mr. Smolensky was not photographed with Mr. Royer's business card on his forehead."

Nearing the end of his two-page letter, Mr. Shapray offered a few comments about Mr. Cleveland, who operated accounts at Global Securities.

"I point out to you that Mr. Cleveland is a felon with a previous conviction for drug dealing," Mr. Shapray wrote.

Indeed, as previously reported by Stockwatch, Mr. Cleveland was charged with trafficking in a controlled and dangerous substance, cocaine, in Oklahoma in March of 1991. Facing a possible life sentence, he copped a plea in that case, too, and testified for the prosecution. In February of 1995 he was sentenced to 10 years in prison, but was released on Feb. 29, 1996.

"After an initial plea of Not Guilty to felony charges involving racketeering, conspiracy to defraud the United States and interference with commerce by threat or violence charges, Mr. Cleveland changed his plea to Guilty in July 2002, but apparently was not sentenced pending the outcome of the trial where he gave evidence for the prosecution," Mr. Shapray continued.

"My understanding is that defendants who provide evidence on behalf of the government in its prosecutions are generally provided more lenient treatment at the time of their sentencing," Mr. Shapray wrote.

Mr. Shapray closed out his Jan. 13 letter with another caution.

"I must advise you that any publication that suggests directly or by innuendo that Mr. Smolensky engaged in improper conduct in connection with dealings with Mr. Royer, Mr. Elgindy or Mr. Cleveland is libelous and that any publication of words, be they Cleveland's or yours, that assert or imply such improper conduct by Mr. Smolensky or Global will lead to litigation that will be prosecuted vigorously," Mr. Shapray wrote.

In order to ensure a fair and accurate report, Stockwatch has invited comments from Mr. Smolensky on several occasions over the past two weeks, including asking whether he had anything to add to the comments provided by Mr. Shapray. No additional comments have been received.

Forestalling misinterpretation can be a difficult task, perhaps particularly when faced, for example, with a reader who might find it "incorrect and disparaging" to describe someone who goes to a party as a "partygoer."

However, as previously remarked in this article and expressly stated again, Stockwatch is not in any way suggesting that Mr. Smolensky or Global Securities engaged in improper conduct in dealing with Mr. Elgindy, Mr. Royer, Mr. Cleveland or anyone else.

As for Mr. Elgindy and Mr. Royer, however, the jury found that they committed a number of illegal acts.

Notwithstanding the conviction on 11 counts, including one count of extortion, Mr. Elgindy's lawyer Mr. Berke says that a full consideration of all the factors in the case counsels in favour of a much shorter prison term than the life sentence recommended by the PSR.

According to Mr. Berke, factors that should be considered include the true nature and circumstances of the proven offences, Mr. Elgindy's humanitarian works and good deeds, his struggles with manic-depressive disorder and, among other things, a long, if complicated, record of co-operation with law enforcement agencies.

Stockwatch will review Mr. Berke's 117-page sentencing memorandum and approximately 350 pages of supporting exhibits, including 140 pages of letters from 53 people, in more detail in a following article.