

THE RECORDER

133RD YEAR NO. 54

www.callaw.com

FRIDAY, MARCH 20, 2009

An incisivemedia publication

Roberts off SEC's hook

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Kent Roberts, one of the government's poster boys for deceitful lawyers in the stock option backdating scandal, has beaten the rap once and for all.

The Securities and Exchange Commission dropped its charges against Roberts, former general counsel of McAfee Inc., in a Thursday court filing. Roberts, who had been accused of backdating stock options for himself and others at McAfee in 2000, had already beaten criminal charges before a San Francisco federal jury in October.

"It's a complete vindication for Kent," said **William Freeman**, a **Cooley Godward Kronish** partner who represented Roberts, along with partners **Stephen Neal** and **Neal Stephens**.

Roberts, who was fired by the Santa Clara-based computer security firm in 2006 and then charged by the government in 2007, issued a prepared statement.

"This has been a very trying time for me and my family. I trusted in God that the truth would come out," he said. "I want to thank my wife Susan, our families and our friends for their unwavering support. Of course, I have nothing but praise and respect for Cooley Godward Kronish and the work they did in achieving justice for me."

The lead SEC lawyer on the case, Washington, D.C.-based Stephen Cohen, as well as other SEC representatives didn't return calls seeking comment Thursday afternoon.

Although SEC lawyers have a lower

burden of proof than their DOJ counterparts, observers say the failure in the criminal trial probably impacted the decision to drop the case.

"The government — in the broadest sense of the word — had its day in court and couldn't convince a jury," said Norman Blears, a veteran securities lawyer with Hogan & Hartson.

"It's true that there's a different standard of proof for the SEC, but the SEC has limited resources and there are a lot of other issues that are much more current and of larger immediate concern to all of us than whether one individual modified the terms of a single stock option grant to himself six years ago," Blears said.

The SEC wasn't even able to exact a fine from Roberts, like it did with so many other executives caught up in the backdating scandal. For instance, former Apple GC Nancy Heinen paid \$2.2 million to settle SEC backdating charges last August.

Federal prosecutors took a narrow case to trial against Roberts, trying to convict him on two counts of mail fraud, which focused on his changing the date of his own options. The SEC had a broader case, alleging that he backdated another executive's options and filed false statements with the SEC.

Freeman said that the SEC dismissed the charges after Cooley lawyers laid out the exonerating evidence.

"We've been telling them for two years that Kent didn't do anything wrong, and it took the discovery that we did in the civil case to prove our point," Freeman said. "What it showed was that the change



SHELLEY EADES

OUT WITH A WHIMPER: The SEC dropped its stock option backdating case against Kent Roberts, former McAfee GC.

made to Kent's options was consistent with company policy."

McAfee, which restated its financials to the tune of \$137 million because of its backdating problems, fired Roberts in the spring of 2006 after an internal investigation by Howrey.

Freeman said the final result in the cases "shows that everything reported to the government by internal investigators doesn't always turn out to be true — they highlighted facts that put Kent in a bad light and didn't highlight facts that explained what he did."

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