

## Ex-Judge Can't Get Obstruction Retrial Over Phone Evidence

By **Ivan Moreno**

*Law360 (February 23, 2022, 9:12 PM EST)* -- A former New York State Supreme Court judge convicted of obstructing an investigation into a credit union lost her retrial bid Wednesday after failing to show that the court abused its discretion by allowing prosecutors to use texts and emails between her and the lender's now-incarcerated CEO.

U.S. District Judge Lewis A. Kaplan said Sylvia Ash's request "is without merit."

"She has not even demonstrated that any of the evidentiary rulings presented a particularly difficult question," Judge Kaplan wrote in a one-page order.

Jurors convicted Ash in December of conspiracy to obstruct justice, obstructing justice, and making false statements during an investigation into New York's Municipal Credit Union's then-CEO, Kam Wong, a friend of Ash now serving a five-and-a-half-year prison sentence for stealing nearly \$10 million from the troubled lender. Jurors acquitted Ash on one obstructing justice count.

Prosecutors accused Ash of wiping her iPhone before giving it to investigators in 2018 and conspiring with Wong to stymie the probe into Wong's misdeeds by lying to the government. Ash's attorneys maintained she just transferred the contents of her mobile phone to another phone instead of deleting content from any device.

In arguing for a new trial, Ash said the evidence prosecutors got from her phone and emails violated her Fifth Amendment rights. The trial court held that Ash's emails and phone records were lawfully obtained.

Ash also said her lawyers should have been allowed to cross-examine the federal agent to whom she allegedly lied after prosecutors disclosed that the agent had an outstanding personal loan with MCU of about \$16,000 in 2016.

That ruling alone warranted a new trial, Ash argued, saying her attorneys should have been able to question the agent about his compliance with U.S. Department of Justice's conflict of interest policies and whether he disclosed his dealings with MCU before investigating Ash.

One of Ash's attorneys, Carrie Cohen, had no comment on the ruling. The U.S. Attorney's Office in Manhattan, which had opposed the retrial bid, also declined to comment Wednesday.

"Every one of her claims was briefed by the parties previously, all were also argued orally, and all were rejected by the court," the government previously said in court documents. "In many cases, the claims failed for multiple, independent reasons. They still do."

Prosecutors argued the central question when asking for a new trial is not whether there were errors in evidentiary rulings but whether there's a concern that an innocent person was convicted.

Ash, who oversaw Brooklyn's commercial division before her 2019 arrest and conviction, is scheduled to be sentenced April 20.

Ash is represented by Carrie Cohen, Janie Buckley and Nathan Reilly of Morrison & Foerster LLP.

The government is represented by Eli Mark, Jonathan Rebold, Alona Katz and Daniel Charles Richenthal of the U.S. Attorney's Office for the Southern District of New York.

The case is U.S.A. v. Sylvia Ash, case number 1:19-cr-00780, in the U.S. District Court for the Southern District of New York.

--Editing by Dave Trumbore.