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Federal Judge Grants Sweeping Suppression Motion in Wey Fraud Case

B. Colby Hamilton, New York Law Journal

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Benjamin Wey in 2015
AP/Frank Franklin II

A Manhattan federal judge granted a sweeping suppression motion in the government's fraud case against financier [Benjamin Wey](#) Tuesday, [siding with the defendant](#) over Fourth Amendment concerns in a significant setback to federal prosecutors.

In [a 96-page opinion](#), Southern District Judge [Alison Nathan](#) said the material garnered in the government's searches of Wey's New York Global Group offices and home required suppression because the "essentially limitless" warrants weren't specific enough.

He also said the government had unreasonably retained the confiscated material in a "lengthy (and continuing) retention and indiscriminate review."

Wey was charged in [an eight-count indictment](#) in September 2015 with, among other charges, securities and wire fraud conspiracy and money laundering.

Prosecutors alleged Wey manipulated stock prices to sell shares at artificially high levels for companies in which he secretly controlled substantial shares. Wey allegedly used reverse mergers with Chinese companies to gain control of the stock. Wey pleaded innocent.

On Jan. 25, 2012, federal agents searched the company's offices and Wey's apartment. Federal agents seized thousands of pages from the two locations, along with computers, other electronic devices, and images of Wey's employees' cellphones. Agents also recovered in their search drug prescriptions, X-rays of Wey family members, children's test scores, divorce papers from Wey's first marriage, photographs of the family as well as "rural landscapes."

In *USA v. Wey et al*, 15-cr-00611, Nathan wrote that the warrants for the two locations were, on their face, deficient because they failed to properly describe the suspected criminal conduct, rendering them "insufficiently particularized."

Further, she said, the government's factual premise was "faulty" because the seizure was so broad that, rather than being focused on securities fraud, they were "consistent with an investigation into almost any form of financial crime (or even concealment of the fruits of some nonfinancial crime)."

These deficiencies led directly, in Nathan's view, to a third invalidating reason. The material gathered was "of a 'catch-all' variety" that failed to have "any linkage to the suspected criminal activity, or indeed any meaningful content-based parameter or other limiting principle."

While Nathan found no reason to believe the agents acted with malice in the request and execution of the warrants, she did find that "their conduct cannot be credibly explained by exigent circumstance, by simple mistake, or by mere negligence."

"The agents—who are charged with reasonable knowledge of what the law prohibits—appear to have disregarded well-established constitutional principles that provide a bulwark against the execution of general warrants," Nathan wrote. "That reflects, at the least, gross negligence or recklessness as to the potential for violation of the Fourth Amendment."

The court ordered the "extraordinary remedy" of suppression of all the evidence gathered from both locations as the "only appropriate recourse."

Nathan's decision cited Southern District cases such as *USA v. Vilar et al*, 05-cr-00621 and *USA v. Zemlyansky et al*, 12-cr-00171, which highlighted ongoing concerns in the district with federal authority's warrant overreach.

Wey's attorney, Haynes and Boone partner David Siegal, praised Nathan's citations defending of Fourth Amendment principles in her opinion his client's case.

Related Decisions:

- [United States v. Benjamin Wey, 15-CR-611](#)
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