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'Hedge Fund' Founder's Sentencing Nixed On Victim Question

By **William Gorta**

Law360, New York (September 14, 2017, 6:56 PM EDT) -- A New York federal judge on Thursday adjourned the sentencing of a would-be hedge fund founder who pled guilty to conspiracy to commit securities and wire fraud after questions arose about whether the victim fund was actually a co-conspirator.

Nicholas Mitsakos **pled guilty** in July to luring investors with claims of glowing performance by his hedge fund Matrix Capital when in fact it was all fiction. After Cayman-based Meridian Asset Management cast its lot — about \$2 million — with Mitsakos, he invested some and used some for personal expenses, it was alleged.

But at Thursday's hearing, Mitsakos' attorney Eric M. Creizman of Creizman PLLC told U.S. Circuit Judge Denny Chin, who was overseeing the case by designation, that he was notified by the government on Monday of potential Brady/Giglio material that John Geraci, Meridian's managing partner, may have made misrepresentations to his clients to get the money to invest with Mitsakos.

Judge Chin said it was important to see whether Meridian was a participant in the fraud or simply passing on Mitsakos' misrepresentation.

"I don't think there's any dispute Mr. Mitsakos made false statements to Meridian," Judge Chin said. "I'm wondering whether Meridian knew they were false. I don't know to what extent Meridian was a co-conspirator rather than a victim."

Over Creizman's objection, Judge Chin allowed a victim impact statement from an Alabama couple, Brenda and Brian Senn, who lost their \$2 million life savings — college money for their five children — after investing with Meridian, which then invested with Matrix. The couple said they had spoken only to Geraci, who told them Mitsakos' Matrix had \$60 million already invested.

Judge Chin said that much of what the Senns said was consistent with what Mitsakos said on a call that was recorded.

But, Creizman pointed out, "When Meridian received a substantial amount of money back, it did not give any back to the victims [the Senns]." Creizman suggested that the order of restitution benefit the Senns rather than Geraci or Matrix.

"We second that request. ... We don't know if you're allowed to say it, but we do," Brian Senn said.

Judge Chin also said he would consider a letter faxed to him Thursday morning by California attorney Ted Lindquist III, which claimed there was a \$3.5 million judgment against Mitsakos in a California state civil case, that Mitsakos sold stock in violation of an injunction and that the judge found the Mitsakos had not testified credibly. Assistant U.S. Attorney Robert Wood Allen suggested the judge consider the letter as a submission similar to laudatory letters submitted on Mitsakos' behalf.

But Judge Chen said he wasn't happy with Lindquist's tactics, which included threats to inform the sentencing judge of his allegations unless Mitsakos provided him with information on stock sales.

"I don't want to accuse Mr. Lindquist of acting unethically but it certainly smacks of threatening to bring this to the court's attention if you don't do something," Judge Chin said. "It certainly raises questions in

my mind whether this is an appropriate tactic.”

Judge Chin ordered the parties back for a hearing on Oct. 18.

Prosecutors accused Mitsakos of telling investors he had gotten eye-popping returns with his hedge fund Matrix Capital, when really, he had no funding to do any such thing, according to the government’s case. When he did get an investor to fork over \$2 million, he put some of it to work in the markets and spent the rest on himself, prosecutors said.

Prosecutors said Mitsakos lied to investors about his fund's performance and retroactively faked trades. He also is accused of telling investors that his fund had ties to KPMG LLP, when in fact the auditing giant was never formally retained.

Mitsakos created Matrix Capital in 2013, calling it a “long-short” hedge fund that invested in undervalued securities and sold overvalued ones short, according to charging documents. Then-Manhattan U.S. Attorney Preet Bharara summed up the case by saying the defendant essentially “ran an imaginary portfolio.”

Judge Chin took over the case in May after U.S. District Judge Paul A. Engelmayer developed a scheduling conflict for its July trial date. Not long after Judge Chin was assigned, Mitsakos pled guilty.

Creizman declined to comment on Thursday. A representative for the Manhattan U.S. Attorney’s office also declined to comment. Lindquist and Geraci did not immediately respond to requests for comment.

The government is represented by Assistant U.S. Attorneys Robert Wood Allen and Brendan Francis Quigley.

Mitsakos is represented by Eric M. Creizman and Melissa Madrigal of Creizman PLLC.

The case is U.S. v. Mitsakos, case number 1:16-cr-00631, in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.