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Identifying problem transactions immediately can help keep you off the witness stand.

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Last October, Charles McKinney, then a senior vice president at UBS Financial Services, played a prominent role in the insider trading trial of his client, Dallas Mavericks owner Mark Cuban. McKinney found himself in front of a Dallas federal court jury in part thanks to a 2004 email message that Cuban, the entrepreneur and "Shark Tank" star, sent McKinney about a massive trade he made that same year.

"I wanted to make sure I was 100 pct kosher on that trade," Cuban wrote in the e-mail to McKinney. He asked McKinney to check with his compliance and legal department to confirm the legality of the trade, which McKinney did. His firm's team raised no red flags over the trade.

The SEC had alleged in its civil insider trading suit, filed in 2008, that Cuban had received and traded upon insider information when he made that trade, a large block of stock in Canada-based company Mamma.com. The trade helped Cuban avoid a $750,000 loss. On Oct. 16, the jury rejected the agency's entire case against Cuban. Fortunately for McKinney, who was never a defendant in the SEC litigation, Cuban's victory ends both his grilling by government lawyers and his unwanted public notoriety (he was called "Cuban's Trigger Man" in one New York Post article).

Although Cuban's fight with the SEC is finished, financial advisors can learn a lot from it, says Kevin T. Abikoff, partner in the Washington law firm Hughes Hubbard & Reed. Abikoff represented McKinney as a witness during the Cuban trial. McKinney, now a managing director and broker at Credit Suisse Group AG in Dallas, did not return a call for this story.

If you are called to testify in front of a jury on behalf of your client, there are some key things to remember, says Abikoff, who declined to speak specifically about the Cuban litigation. He says that if an advisor is surprised by a subpoena, he or she is already in trouble. Preparation for possible legal action should begin long before that dreaded piece of certified mail arrives, he adds.

In general, if financial advisors have any inkling that an issue might arise with a transaction, they should direct any concerns to their compliance department and lawyers "within the first minutes" of learning about it, Abikoff says. But in order to do that, advisors need to be intimately familiar and current on securities and insider trading rules so that their "reaction is instinctive," he adds. If it isn't, you need to get busy studying.

That initial instinct, which is your best guide to keeping off the witness stand, is often trumped by a secondary instinct to protect your client, Abikoff says. "The broker feels a tug that he is somehow being disloyal to his client," by contacting the lawyers, he says. Listen to the first instinct, ignore the second, he adds.

Once a trade or transaction becomes the subject of potential litigation, Abikoff says, advisors should follow three steps: Reconstruct all recollections and communications related to the transaction; seek the help of a lawyer; and do so before your first meeting with any prospective court opponents, particularly if they come from the government. "There is no such thing as a friendly session with the SEC," Abikoff says.

Spend the most time and effort working on a comprehensive reconstruction of events. Abikoff recommends brokers immediately write down everything they remember about a transaction as soon as questions arise. Even the most honest financial advisors can forget about a conversation or email. Revising information after already giving evidence or a deposition to government lawyers looks very bad, Abikoff says.

"Providing the government with inadvertently inaccurate information gives a misimpression," he says. Such mishaps are more likely in this era of digital records because so much communication between clients and advisors occurs in texts or emails. Those emails and texts are nearly indestructible and almost everything communicated in that manner may be found through the electronic discovery techniques that lawyers, including government lawyers, use, according to Abikoff.

Lastly, Abikoff says, "You need to be entirely honest with the government." If you fail to tell the government everything or seem hazy, Abikoff says, a broker makes a bad impression and once he or she has done that, the situation is harder to turn around.

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