



Prosecutors faulted in reversal of Vegas mortgage fraud conviction

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By Jeff German
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A federal appeals panel Friday ordered the dismissal of a mortgage fraud case against a lawyer who claimed he was charged after prosecutors falsely accused him of violating an immunity agreement.

David Mark, who now lives in New Orleans, [was convicted in April 2013](#) in Las Vegas of conspiracy and fraud charges in one of the state's largest mortgage fraud cases. He was [later sentenced to three years](#) in federal prison by now-retired Senior U.S. District Judge Philip Pro.

The three-judge panel of the 9th U.S. Circuit Court of Appeals found that Pro relied on a "scant record" and "inaccurate" information from prosecutors about the immunity breach when he refused to dismiss Mark's indictment.

"When the government promises not to prosecute a witness in exchange for his cooperation, it cannot then indict the witness unless it proves that he failed to cooperate," the panel wrote. "Because the government did not do so here, we remand with instructions to dismiss the indictment."

Mark's New Orleans lawyer, Michael Fawer, said Mark was "needlessly" put through the emotional trauma of a trial because of misconduct by prosecutors in the Nevada U.S. attorney's office.

"The 9th Circuit saw through the government misrepresentations and totally vindicated our position," Fawer said. "This should put the Department of Justice on notice that they need to monitor the ethical conduct of their attorneys."

Nevada U.S. Attorney Daniel Bogden acknowledged that mistakes were made.

"I certainly am not pleased with the outcome of this case, but can assure the public that the mistakes made have been addressed," he said.

Bogden would not discuss specifics but said "steps were taken to ensure the problems pointed out by the 9th Circuit do not come up again."

The case was tried by Sarah Griswold, who remains with the office, and Brian Pugh, who has since left to take a job with the federal public defender's office.

Mark, who is not a licensed Nevada attorney, [in November 2007](#) gave the FBI information that led to the indictment of a prominent couple in the mortgage industry in connection with fraud that prosecutors alleged cost banks more than \$52 million.

Prosecutors promised Mark immunity if he continued to cooperate against mortgage broker Steven Grimm and his ex-wife, real estate broker Eve Mazzearella. Both were convicted and given stiff prison terms.

But Mark, who had worked for Mazzearella, was charged after prosecutors said he "feigned memory loss" and breached the verbal immunity agreement before the couple's trial.

According to the 9th Circuit's opinion, Pugh maintained at Mark's trial that the memory loss occurred in a July 2011 call between the two men. But Pugh acknowledged there were no notes or other records of the conversation.

Mark insisted there was no phone call, and his lawyers later learned no records of the call existed.

Pro gave weight to the testimony of Pugh and Griswold and refused to dismiss the case, and that amounted to an abuse of the judge's discretion, the panel concluded.

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