

2nd Circ. Denies Jury Trial In Abbott Labs Gray Market Case

By **Andrew Karpan**

Law360 (September 26, 2024, 9:09 PM EDT) -- A man and his wife involved in the sale of gray market diabetes test strips on Tuesday were unable to persuade the Second Circuit to undo the \$33.4 million judgment they owe to Abbott Laboratories after a federal judge stripped them of their right to a jury trial.

In an unsigned order, the federal appeals court found that violations of legal discovery protocols that shocked a federal magistrate judge in New York meant that Howard Goldman and his H&H Wholesale Services Inc. had "waived their right to a jury trial on damages."

Goldman's wife and employee, Lori Goldman, was also "individually responsible" for "attempting to cover up" those discovery violations," the appeals court said, finding that she didn't deserve a jury trial either.

Without a jury trial, the couple was ordered to pay more than \$33 million to Abbott, which had targeted H&H in a sprawling trademark litigation campaign against companies that sold versions of its blood glucose test strips in the U.S. that Abbott only intended to sell in other countries. Back in July, a New York judge moved to freeze the Goldmans' assets in view of this judgment.

The magistrate judge, who said the Goldmans deserve "the harshest sanction" for using search terms they knew wouldn't turn up results, didn't have the power to stop a jury trial, according to a brief from Howard Goldman and H&H.

"The issue before the magistrate judge was whether sanctions should be imposed and, if so, in what degree of severity — nothing more," according to their brief. "The magistrate judge had no statutory authority to determine whether or how a trial would be conducted."

That magistrate judge did not even find "that Ms. Goldman herself had withheld documents, just that the documents 'were withheld,'" according to the argument from Lori Goldman. "There is no finding that Ms. Goldman participated in that process or was even aware of it."

The arguments proved unconvincing to the appeals court.

"[Magistrate] Judge [Lois] Bloom identified multiple instances in which Ms. Goldman misled Abbott and



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the court by falsely claiming that she had no role at H&H and no responsive documents to produce," according to the Second Circuit's decision. "[Lori] Goldman was individually responsible for meeting her discovery obligations and for attempting to cover up the discovery violations. The district court therefore did not abuse its discretion when it concluded that Ms. Goldman had personally acted in bad faith."

Representatives for the parties did not immediately return a request for comment.

Abbott is represented by Natalie Noble, Geoffrey Potter, Nicole C. Scully and Timothy A. Waters of Patterson Belknap Webb & Tyler LLP.

Howard Goldman is represented by Peter Michael Levine, Esq.

Lori Goldman is represented by Joshua H. Epstein of Davis & Gilbert LLP.

The case is Abbott Laboratories et al. v. H&H Wholesale Services Inc. et al., case number 23-446, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Dorothy Atkins. Editing by Andrew Cohen.