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Panel Suspends Former G.C. For Three Years

BY DANIEL WISE

A FORMER general counsel of a New York-based manufacturer of video games was suspended from the practice of law for three years last week by an appeals court for covering his boss' tracks in backdating stock options.

A hearing panel convened by the disciplinary committee of the Appellate Division, First Department, had recommended a suspension of only one year for Kenneth Selterman, who served from 1999 to 2007 as general counsel of Take-Two Interactive Software, the maker of the popular "Grand Theft Auto" series.

However, a unanimous panel of the court ruled in *Matter of Selterman*, M-5723, that he should receive a more substantial penalty.

In a per curiam opinion, the panel ruled Mr. Selterman should receive the harsher penalty in light of his position, "level of sophistication and legal experience and his apparent lack of remorse."

Both Mr. Selterman and Take-Two's former chief executive officer, Ryan A. Brant, pleaded guilty to charges filed by the Manhattan District Attorney's Office stemming from a 2002 NASDAQ investigation of stock backdating.

In February 2007, Mr. Brant pleaded guilty to backdating stock options and agreed to pay a total of \$7.3 million in ill-gotten gains and fines. He was sentenced to probation.

Chief Judge Steps Up Lobbying To Obtain Pay Raises for Judges

BY JOEL STASHENKO

ALBANY

CHIEF JUDGE Jonathan Lippman says he is intensifying his efforts to convince state lawmakers and the governor to grant a pay raise to judges despite a projected budget gap in the current fiscal year that has climbed past \$2 billion.

"I have within the last days continued to talk to both houses and the leadership and to the governor's office about this issue," the chief judge said in an interview last week. "This is the highest priority. We are absolutely committed in the coming weeks to ratchet this issue up at the highest levels of state government to get this done."

Judge Lippman said he is promoting an immediate pay increase for the 1,300 state judges and creation of a commission to periodically recommend judicial salary hikes to prevent future protracted pay droughts. State judges have not had a salary increase since 1999.

Approval of a pay bill through legislation also would head off



Chief Judge Lippman

pay litigation that is moving rapidly to the Court of Appeals. The Court has agreed to hear appeals in two of the cases, *Maron v. Silver* and *Larabee v. Governor*, and a motion is pending before the Court to accept on direct appeal a third case, *Chief Judge v. Governor* (NYLJ, July 21).

The Court is expected to hear oral arguments in *Maron* and *Larabee*, in which Appellate Division panels split over judges' entitlement to raises, as early as November.

Judge Lippman said he will recuse himself in the pay cases because he is the plaintiff in *Chief*

Judge v. Governor, a case filed by his predecessor, Judith S. Kaye.

Judge Lippman also said he could not discuss the legal merits of any of the cases or their possible effect on pay raise legislation.

But he said a resolution by the governor and Legislature would be preferable for all three branches to a court-imposed solution to the pay impasse.

"The legal case will run its course," the chief judge said. "But I believe the better course for state government, the better course for the Judiciary, is to resolve this matter the way such matters have historically been resolved. This is the way government is supposed to work. By doing it through the legislative process, we can resolve everything that has to do with this issue, not just the immediate issue of a pay raise for judges, but to resolve this permanently" through a commission.

The chief judge said he has found legislators and Mr. Paterson's aides open to hearing arguments for raising judges' pay through legisla-

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IN THE COURTS

Lawyers Urge End to U.S. Court's Ban on Devices

BY MARK FASS

courthouse, notwithstanding concerns regarding security and decorum.



Judges' Pay

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tion. He said he has pressed his lobbying efforts following the apparent resolution of a leadership dispute in the Senate that all but paralyzed the work of the Legislature for more than a month beginning June 8.

"No one is closing the door," Judge Lippman said. "In my discussions, and they are ongoing, I find a recognition that this cannot, should not, go on the way it has for so many years."

Fiscal Problems

Legislators said the chief judge has a tall task before him considering the state's fiscal position.

Melissa Mansfield, a spokeswoman for Assembly Speaker Sheldon Silver, D-Manhattan, said Mr. Silver is "sympathetic" to the judges' quest for a pay raise but believes "in these economic times it is very difficult to address this issue."

Assemblywoman Helene Weinstein, D-Brooklyn who is chairwoman of the Assembly's Judiciary Committee, said the best Judge Lippman might be able to accomplish would be to secure a pay raise and pay commission, both of which would take effect in the future when the state's financial picture brightens.

"Hundreds of thousands of New Yorkers are losing their jobs," Ms. Weinstein said. "Our unemployment is at an all-time high. The political atmosphere and the fiscal atmosphere are not terrific at the moment."

Senator Eric Schneiderman, on the other hand, said Judge Lippman is arguing for something that most state legislators support. Though the economic times are "challenging," the amount of money it would cost to raise judge's pay is "very small" relative to the size of the budget, said Mr. Schneiderman, a Manhattan Democrat who chairs the Senate's Codes Committee.

"I don't think it's pie in the sky," Mr. Schneiderman said. "It's not a lot of money."

Judge Lippman's efforts also make sense from the standpoint of the chief judge being an advocate for the judiciary, Mr. Schneiderman said.

"There is always a danger in Albany that if you stop talking about something, people forget

about it," he said.

Mr. Paterson's office did not return calls seeking comment.

The judiciary came close in 2007 to winning a legislatively sanctioned pay raise. But raises for lawmakers that were linked to judges' salary increases were blocked by then-Governor Eliot Spitzer, who was feuding with lawmakers over proposed ethics reforms (NYLJ, April 2, 2007).

Under Mr. Paterson, the worsening condition of the state's economy and budget have been cited as precluding a pay raise. In May 2009, Mr. Paterson said that while judges clearly deserve raises, he could not see them getting more money until the economy "stabilizes" (NYLJ, May 4).

Last Thursday, Mr. Paterson's budget division reported that a projected \$2.1 billion gap had opened in the \$131.8 billion budget for fiscal 2009-10 due almost exclusively to lower-than-expected tax revenue collections. The current fiscal year ends on March 31, 2010. Budget Director Robert Megna also said a shortfall of \$4.6 billion would develop by the end of the 2010-11 budget year if nothing is done. That is more than double the \$2.2 billion gap projected just four months ago.

11-Year Hiatus

Judge Lippman said legislative pay raises are viable, despite New York's economy.

He noted that \$48 million had been re-appropriated in the current state budget for raises retroactive to Jan. 1, 2009, although lawmakers again this year did not include language in the budget providing the authority to add the money to judges' paychecks.

"I don't think that one can seriously point to the budget as being a problem," Judge Lippman said. "The money is in the budget to get this done. It is not an issue of taking additional monies to pay for this. I don't believe the economy is a rational excuse to deny people who are so critical in state government a raise, now going into an 11th year."

The pending chief judge's suit seeks raises that are retroactive to April 1, 2005. The total cost would be approximately \$148 million in this fiscal year.

Michael E. Getnick, president of the New York State Bar Association and a long-time advocate of a judicial pay raise, said he agreed with Judge Lippman that it is

"very, very misplaced" to argue against a salary hike based on the current downturn after judges have been denied raises for so many years, some of them in good economic times.

"From my viewpoint, if anything, the judges have suffered disproportionately, and they have not received even a cost-of-living increase for a decade," said Mr. Getnick, of Getnick Livingston Atkinson & Priore in Utica.

Victor A. Kovner of the Fund for Modern Courts said the state has a "fundamental obligation" to pay judges a fair wage and that the judiciary can defend the cost as being as important as money spent on police, hospitals, senior care or other vital state-funded programs.

"It is profoundly unjust leaving our judges with a substantial diminution of compensation over the years," Mr. Kovner, of Davis Wright Tremaine, said. "It is outrageous. No one should stand for it."

Mr. Kovner said having the Court of Appeals decide cases that could result in court-ordered raises for state judges is "not healthy" and could have a lingering effect on how the public perceives the operations of the courts and its decisions.

"It is something that will rub many people the wrong way," Mr. Kovner said. "It could engender hostility toward the judiciary. It may be viewed as self-serving, which is not healthy for the society and it really is a last resort."

But Brooklyn Supreme Court Justice Marsha L. Steinhardt said that by advancing to the Court of Appeals, the pay suits may "lead to some give and take" if there is the prospect of the courts dictating terms of a pay raise to the Legislature.

"It is said that deals are made when greed and fear intersect," said Justice Steinhardt, who has personally lobbied legislators for a pay raise bill. "I can't think that the judges are the greedy ones in this, but hopefully there is some fear in the Legislature."

Ms. Weinstein and Mr. Schneiderman both said the pending litigation in the Court of Appeals will have no effect on the willingness of the Legislature to vote judges a raise.

"I don't think the Legislature thinks like that," Mr. Schneiderman said.

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