

UPDATED

Shkreli Guilty on 3 of 8 Charges in Brooklyn Federal Court

 Andrew Denney, *New York Law Journal*

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Martin Shkreli, left, and his attorney Benjamin Brafman speak with reporters outside federal court after the verdict Friday.

AP/Seth Wenig

After a six-week trial, a jury found former pharmaceutical executive Martin Shkreli guilty of three of eight counts related to a scheme in which prosecutors said he defrauded investors into two hedge funds and paid them back by pilfering another company he formed.

The jury of seven women and five men, who deliberated for five days and handed up their verdict after 2 p.m. on Aug. 4 found Shkreli guilty on two counts of securities fraud and one count of conspiracy to commit securities fraud.

But it found him not guilty of three counts of securities fraud and two counts of conspiracy to commit wire fraud.

One of the wire fraud conspiracy counts—count seven, which lead defense counsel Benjamin Brafman called the "heart of the case"—related to the accusation that Shkreli conspired with his ex-counsel former Katten Muchin Rosenman partner



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Evan Greebel to defraud investors in Retrophin Inc. to pay back investors in hedge funds MSMB Capital Management and MSMB Healthcare.

Throughout its deliberations, the jury issued **only one** substantive note—not counting the notes it sent out at around 5 p.m. each day asking if they could adjourn—in which it asked the court to clarify the terms "assets under management" and "intent to defraud."

"I wish you well, Mr. Shkreli," said U.S. District Judge Kiyoko Matsumoto of the Eastern District of New York after thanking the attorneys in the case. "I'll see you soon."

No sentencing date was set and forfeiture proceedings were scheduled for September. According to a news release from Acting Eastern District U.S. Attorney Bridget Rohde's office, Shkreli, 34, faces a maximum of 20 years on each of the securities fraud counts and up to five years on the securities fraud, but Brafman said the loss of count seven—which he called the "money count"—reduces his potential sentence from eight years to less than one year, according to the federal sentencing guidelines.

Rohde provided a brief statement to reporters after the verdict and thanked prosecutors and investigators who worked on the case, but declined to take questions, noting that Shkreli still has sentencing ahead and that Greebel, Shkreli's **co-defendant**, is set to stand trial in October.

Assistant U.S. attorneys Alixandra Smith, Jacquelyn Kasulis and Girish Srinivasan prosecuted the case.

Appearing with Brafman and Brafman & Associates attorneys Marc Agnifilo, Jacob Kaplan and Andrea Zellan in front of the Eastern District courthouse in Brooklyn, Shkreli, appearing buoyant and wearing a black, short-sleeve polo shirt and khakis, said he was generally pleased with the verdict.

"This was a witch hunt of epic proportions," Shkreli said.

"Maybe they found one or two broomsticks. But at the end of the day, we were acquitted of the most important charges in this case."

Brafman said the counts the government was able to stick to his client are "hanging by a thread."

"My hope is that at the end of the appellate process there is no prison time for Martin," Brafman said.

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Brafman also commended the jury for apparently being able to separate Shkreli the defendant from his public persona: He became well-known a few months before he was arrested on the federal charges after he increased the price of Daraprim, an antiparasitic drug that can be lifesaving for people suffering from HIV and AIDS, from \$13.50 to \$750 per pill.

Brafman acknowledged that his client, who was dubbed "Pharma Bro" by detractors, has an "image issue" that he said presented him "prejudice coming into this case."

"He's a brilliant young man, but sometimes his people skills don't translate well," Brafman said.

Throughout the case, Brafman portrayed Shkreli as a misunderstood genius who acted in good faith to pay back MSMB investors by working tirelessly to turn Retrophin into a financial powerhouse. But a more significant portion of the defense strategy was focused on emphasizing the fact that the alleged victims in the case were wealthy [investors](#) who ultimately made profits.

Although Shkreli did not testify, he was active on social media and on his webcam throughout the case, oftentimes calling out the reporters who were covering the case.

On Aug. 4 after the verdict, he hosted a livestream on YouTube.

"So much fraud—five times their money," he said with a laugh.

Alfredo Mendez, a white-collar defense attorney and partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone who followed the case, said the fact that, unlike Ponzi schemes, the alleged victims actually made money presented a challenge for prosecutors.

But Shkreli's lack of likability, he said, presented a problem for Brafman and the defense team.

Mendez has some experience working with defendants with bad reputations: He was on the prosecution team that got Leona Helmsley, who was known as the "Queen of Mean," convicted of tax evasion in the 1980s.

"Although the jury is not supposed to pay attention to that stuff,

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human nature is what it is," he said.

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