

Criminal Law News



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Fraudulently soliciting \$294 million from investors worldwide-caught by website boasting

Sally Ramage

A Canadian citizen, Philip J. Baker, was found guilty in a Chicago, United States court, of fraudulently soliciting \$294 million from 900 investors worldwide. He was sentenced to the maximum sentence of 20 years imprisonment in a federal prison. He was the managing director of Lake Shore Asset Management Ltd. and the Lake Shore Group of Companies, which purported to trade clients' funds in several commodity futures pools. He had been extradited from Germany in December 2009, having been indicted in February 2009.¹ He was caught because of his company's website. In June 2007, NFA regulators saw a website associated with Lake Shore and saw a press release which stated:

'In its 13-year history, Lake Shore's flagship 'Program 1' has generated a 28.27% compound annual return.'

NFA² staff subsequently visited the Lake Shore Ltd.'s office on North Michigan Avenue in Chicago to conduct an audit to verify the profit claim on the website and because Lake Shore Ltd. had been registered with the NFA only since January 2007. Lake Shore did not provide the NFA with certain records it was required by law to keep and produce to regulators. Later in June 2007, the Commodity Futures Trading Commission (CFTC), filed a civil lawsuit against Lake Shore Ltd. in Federal Court in Chicago, and obtained a court order freezing its assets and requiring the company to produce books and records verifying its profit claims and identifying investors. Even when he was made bankrupt, and his company put into administration, Philip Baker did not produce the requested documents to the CFTC or receiver. He was then indicted on 17 counts of wire fraud, two counts of commodities fraud, one count of embezzlement of commodity pool funds, three counts of obstruction of justice and four counts of criminal contempt. The indictment also seeks forfeiture of at least \$273.5 million.

Repayment of investors' losses

The court ordered Philip Baker to repay the amount that the investors lost as a consequence of his fraud-\$154.8 million. Between 2002 and September 2007, the company, Lake Shore, obtained approximately \$294 million from approximately 900 investors. Baker admitted that he misappropriated at least \$30 million for his own use and for the use of another Lake Shore director. Lake Shore had also incurred several million dollars in net trading losses during the same time period that he misrepresented that Lake Shore's trading was profitable.

¹ *Commodity Futures Trading Commission v. Lake Shore Asset Management Ltd.*, Case No. 07 C 3598

² National Futures Association (NFA) is the industrywide, self-regulatory organization for the U.S. futures industry. We strive every day to develop rules, programs and services that safeguard market integrity, protect investors and help our Members meet their regulatory responsibilities. Managing risk by trading futures and options on futures contracts is a vital component of the global economy. Every business day tens of millions of futures contracts are traded on an increasingly broad spectrum of products, including agricultural commodities, oil, precious metals, equities, treasury bonds, financial indexes and foreign currencies. Investor confidence is crucial to the success of the futures markets, and the best way to gain investor confidence is to ensure that the highest levels of integrity are demanded of all market participants and intermediaries. Membership in NFA is mandatory.

The United States' Dodd-Frank Wall Street Reform and Consumer Protection Act 2010

Sally Ramage

Whistleblowers

On July 21, 2010, the Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 748 of the Dodd-Frank Act amended the Commodity Exchange Act to provide whistleblower incentives and protection, and finance customer education initiatives. The Act brings comprehensive regulation to the swaps marketplace. Swap dealers will now be subject to robust oversight and standardised derivatives will be required to trade on open platforms and be submitted for clearing to central counterparties.

In section 748 of the Dodd-Frank Act, Congress amended the CEA by adding section 23, which directs the Commission to issue final rules implementing whistleblower incentives and protections. Section 748 requires the Commission to pay awards to whistleblowers who are individuals that provide original information to the Commission, which leads to successful enforcement of a Commission action resulting in monetary sanctions exceeding \$1,000,000. The amount of the award, as determined by the Commission, will be between 10 to 30 percent of sanctions collected in either the Commission's action or a related action that is based upon the original information provided by the whistleblower. The Commission will determine whether to grant an award, and the award amount based upon certain criteria. The Commission may exercise discretion in granting an award amount based upon the significance of the information, degree of assistance provided in support of a covered judicial or administrative action, programmatic interest, and any other criteria other than the balance of the Commodity Futures Trading Commission (CFTC) Customer Protection Fund. An award shall be denied to certain government employees and others who are statutorily ineligible. A whistleblower may appeal certain Commission decisions including award denials and amount the appropriate U.S. Circuit Courts of Appeal. Whistleblowers may receive an award based upon violations that occurred prior to the date of enactment of the Dodd-Frank Act (July 21, 2010).

Conditions for receiving whistleblowers' awards

Whistleblowers, who submit original information after the date of enactment of the Dodd-Frank Act but before these proposed rules become effective, will also be eligible for an award provided they comply with the Commission's procedures within one hundred and twenty (120) days of the rules' effective date. A whistleblower who has submitted information after July 16, 2011 may have a private cause of action for employment retaliation of whistleblower activities. Ineligibility to receive a whistleblower award from the Commission award does not preclude application of anti-retaliation protections. The whistleblower has the right to submit information anonymously. However, for a whistleblower to receive a whistleblower award, the whistleblower will need to be identified to selected Commission staff for a final eligibility

determination and, in unusual situations, may need to be identified publicly for trial. To qualify for an award under the Whistleblower Program, a whistleblower must submit information regarding possible violations to the Commission in one of the following ways: by post of a Form TCR to: Commodity Futures Trading Commission (CFTC), Office of the Whistleblower, 1155 21st Street, NW Washington, DC 20581; or by faxing a Form TCR to Fax number (202) 418-5975. Once a Notice of Covered Action is posted, individuals have 90 calendar days to apply for an award by submitting a completed Form WB-APP to the Office of the Whistleblower by midnight on the claim due date listed for that action. Please send completed forms to the Office of the Whistleblower by mail at 1155 21st Street NW, Washington, DC 20581 or by fax at (202)418-5975.

Public Companies and shareholders

The Dodd-Frank Act contains several provisions creating significant compliance challenges for covered financial institutions. Public companies are now required to provide shareholders with an advisory 'say-on-pay' vote on resolutions regarding the compensation of the company's named executive officers, under the new rules adopted by the Securities and Exchange Commission (SEC) in early 2011 under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ('Dodd-Frank Act'). Under the express provisions of the Dodd-Frank Act, this shareholder vote is advisory only and not binding on the company, and does not overrule any decisions of the board or create or imply a change or addition to the fiduciary duties of the company's directors. Businesses should consider seeking legal counsel regarding what measures are needed because there are many significant risks, including obstruction of justice or unnecessarily aggravating a regulatory agency.

Damage limitation

Even when a company learns about a whistleblower issue that has been or likely will be reported to the SEC, opportunities still remain for companies to limit the damage. Companies may be able to help shape the SEC's decision about whether to proceed with an enforcement action. This is because the SEC currently is not prepared to handle the expected number of whistleblower complaints, which it estimates to be about 30,000 annually, although SEC staff will continue the practice of receiving information from companies in the early stages of an internal investigation and may agree to await further results from the investigation before deciding what may be its next step. Companies may be wise to seek outside counsel to advise them and oversee a thorough internal investigation.

The Securities Exchange Commission (SEC)

The Dodd-Frank whistleblower rules may incentivise employee bounty-hunting at Public Companies. Public Companies therefore need to improve their compliance programs to limit the potential hazards. On May 25, 2011, the U.S. Securities and Exchange Commission (SEC) adopted 'final rules'³ for the expanded whistleblower program established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act directs the SEC to adopt regulations to provide payment of awards to eligible individuals for reporting violations of federal securities laws to the federal government. The Act requires the SEC to award qualifying whistleblowers a bounty of 10% to 30% of the aggregate money over a \$1 million

³ The Rules raise some challenging issues, perhaps the most significant being the impact on existing compliance and corporate governance procedures.

threshold recovered by the SEC in eligible actions resulting from original information provided to the SEC by the whistleblowers. The Rules take effect on August 12, 2011. Listed entities may be concerned that their compliance programs will be bypassed by whistleblowers that now have strong incentives to place their personal interests ahead of loyalties to their employers.

Who qualifies as a whistleblower under the Dodd Frank Act rules?

In this Act, a whistleblower is a person who provides ‘information’⁴ about a possible violation of the securities laws that he or she reasonably believes has occurred, is ongoing or is about to occur, and includes employees, agents or any other individual who provides relevant original information, including independent contractors, consultants, joint venture partners, sales agents, persons involved with a private, wholly owned subsidiary consolidated in a publicly traded entity's balance sheet *or* even persons involved with a wholly owned foreign subsidiary consolidated in a publicly traded entity's balance sheet. The Rules, limit the pool of qualified applicants by restricting the eligibility of certain individuals – including officers and directors, lawyers, auditors and compliance personnel – from receiving an award under the program, unless certain exceptions apply. Many commentators, including two SEC Commissioners, expressed concerns that the exceptions include lawyers who owe fiduciary responsibilities to a company.

Exemption to exclusion of lawyers

An exemption to the exclusion will apply where an attorney whistleblower has a reasonable basis to believe that disclosure of the privileged information is necessary to prevent substantial injury to the financial interest or property of investors.. In such cases, it may be difficult for the SEC to challenge a whistleblower lawyer who claims that an immediate reporting was necessary to avoid significant harm to innocent investors and others involved with a company. The Rules also allow anonymous reporting, if done through counsel.

British schoolboy stabbed to death

Sally Ramage

In November 2011, at the Old Bailey Criminal Court, 5 teenagers were convicted, four of murder and one of manslaughter, of the death of a 15-year-old schoolboy, Zac Olumegbon, who was stabbed in July 2011 on his arrival at the gates of the school he attended, Park

⁴ ‘Information’ here means ‘original information’ to the SEC. ‘Original information’ is defined as information derived from the independent knowledge or independent analysis of the whistleblower; not already known to the SEC from any other source, unless the whistleblower is the original source of the information; not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit or investigation, or from the news media, unless the whistleblower is a source of the information; and provided to the SEC for the first time after July 21, 2010.

Campus School in South London.. Zac had been stabbed four times, two of the wounds piercing his heart. The events that led to Zac's death concerned rivalry between youth gangs. The defendants were members of the GAS (Guns and Shanks) gang from Brixton. Zac belonged to a rival youth gang, the TN1 (Trust No-One) gang from Tulse Hill, London. Such violence as caused the death of Zac is said to be due both prior dyadic ties (past conflict) and turf adjacency with a particular adversary, although the relative importance of prior conflict exceeds that of geographic proximity.⁵

UK Government reaction to the problem of gangs

Despite cuts to almost every other area of its spending, in February 2011, the Home Office announced £18million fund dedicated to tackling knife, gun and gang-related youth violence. That knife crime is being addressed does not, however, hide the fact that youth crime results from poverty and the lack of opportunity available to young people in poor communities. As youth unemployment rises and youth services are cut, the problem will worsen. Education law stipulates that a council must provide 'adequate and sufficient' youth services. However, no legal definition of what is adequate or sufficient is to be found in these laws.. Gangs are becoming more and more popular among younger children. They go to school, they go to college and they see no future whatsoever. The borough of Southwark, South London, has one of the highest crime rates in the United Kingdom and youth workers have reported a rise in the numbers of young people getting involved in gangs. Some youth workers take early intervention actions such as visiting homes of the young people identified by police or youth services as being on the fringes of gang activity. By acting as mentors to such children, they supply the emotional support that hopefully will guide such youth into education or work.

Academic argue that youth crime control imitates the US's hard regimes

There is in the UK, a distinct decline of the rehabilitative ideas and correctionalism. Rehabilitation is still a feature of penal institutions, but it is no longer their leading purpose. The mechanisms required to promote correctional outcomes have been removed from sentencing law and practice. Rehabilitation programmes continue to operate, but are now inscribed within a risk framework rather than the reverse. It is not the offender being rescued, but rather future victims. Punishment as an explicit end in itself has become respectable again and many legislative measures have been passed in order to express public sentiment.⁶

Is drug use at the heart of youth gangs?

The question which has to be asked is whether it is merely association, bonding in their futility of life without employment that is the reason why youth gangs exist .The answer may be that there is a drugs problem as a factor. Many in the UK blame the UK's copying of the US's harsh and controversial 'War on Drugs' promoted by the Bush presidency. Although the title, 'Ware on Drugs' has been dropped by President Obama, the US policies of prohibition and enforcement by police and armed services across the world continue, according to *The Economist*. However, prohibition has fostered gangsterism on a scale that the world has never seen before, according to the UN's estimate that the illegal drug industry is worth \$320 billion a year worldwide.

⁵ Andrew V. Papachristos, David M. Hureau and Anthony A. Brag, 'Conflict and the Corner: the impact of inter-group conflict and geographic turf on gang violence.' INPROL.

⁶ David Garland,(2001) *Punishment, Social Control and Late Modernity*, Oxford: OUP

Conclusion

In conclusion, the sadness that comes from the death of a young boy such as Zac is worrying, not only because this is a death by knife crime but also in the knowledge that converting standard 'lock 17's into full auto Glock 18's by street gangs has become popular in some UK cities. There are fully automatic military weapons, and also 'machine guns' but these are types of rifles. A semiautomatic handgun requires a trigger squeeze for each shot, and loads fresh cartridges into itself from a vertical magazine inserted into a hollow handle grip. The firing pin is held in a free-floating position by a spring. Once fired, recoil causes a backward sliding movement of the breech block (slide) where the spent cartridge makes contact with an ejector tab, activating both an extractor pin and the trigger into a cocked position ready for firing the next round. It is frightening to think that our youth will be dealing in guns as easily as they use knives to cause violent deaths today.



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