

Excerpts from Convicted at Any Cost

The civil tax assessment case in the U.S. Tax Court that the Internal Revenue Service pursued against Segal was a circus separate from the forfeiture proceedings. Instigated by Prosecutor Hogan while Segal was still in prison, it was a civil fraud proceeding designed to collect back taxes and a 75 percent penalty and interest for company payment of personal expenses. It was also meant to collect money that Hogan claimed Daniel Watkins had given to Segal that was not recorded as income or reported on his income tax returns.

Segal filed an appeal and the proceedings were continued by agreement with the IRS counsel's office, although, at one point the IRS suggested that Segal settle the case out of court. Segal flatly rejected that idea and took on the case himself. He spent many hours in the prison library learning how to conduct a U.S. Tax Court proceeding.

The civil tax case was predicated on the same facts as the criminal charge—that Segal and Watkins had conspired to prevent the IRS from collecting taxes—the Klein Conspiracy charge.

When Watkins pled guilty, the government stated that Watkins regularly provided cash from Near North's petty cash fund to Segal to pay for Segal's personal expenses. Watkins claimed he'd concealed the payments by labeling them as postage and repairs or maintenance expenses.

After Segal was freed and began focusing on the tax case, Hogan, although he was not involved in the case, demanded meetings with the IRS attorneys and claimed he had even more evidence for them, branding Segal a thief and a criminal. This was a typically vindictive Hogan maneuver. One of the IRS lawyers

who Hogan met with told him to send them any additional information he had, but nothing was ever sent.

Once again, the IRS raised the possibility of settling the case. When Segal explained that he wanted the IRS to turn over documents backing up their case, two aggressive young IRS attorneys, who may well have seen the case as a career booster, responded with a host of demands for admission of facts and the production of documents. Segal responded in kind, making multiple requests to them. Realizing their legal duty, the IRS began to furnish him with documentation—and it revealed that the evidence in the IRS civil assessment was incomplete and inaccurate.

As the proceedings moved along, the senior IRS attorney in charge told Segal that in the beginning, he'd thought that Segal was blowing smoke. He said he'd been convinced of Segal's guilt by Hogan. Ultimately, however, the IRS counsel's office actually began to help Segal, providing explanations and guidance about how to deal with the sometimes arcane and confusing procedural aspects of U.S. Tax Court.

In February 2014, an entirely different story emerged when Segal sat down to take Watkins' deposition under oath. Watkins, who said that his current job was delivering newspapers, appeared with a criminal defense lawyer, who was clearly not working pro bono. Segal asked Watkins where he'd found the lawyer and Watkins said, "in the yellow pages." Silently, Segal wondered who had bankrolled his defense.

Segal focused on the fallacious statements that had been presented by the prosecutors in various IRS memoranda—and while he and Watkins sparred over numerous issues, Watkins did admit that he'd worn a wire to a meeting with Silets, under the guidance of Agent Murphy. Perhaps just as striking were Watkins's revelations when he was questioned by IRS attorney John Comeau.

“In 1999, any other money that [Segal] received from Near North that was not his salary, do you know whether he used it for his personal benefit?” asked Comeau.

“No, I don’t know if he did,” Watkins said.

“Did [Segal’s wife] Joy receive money from Near North, other than direct deposit salary?”

“I don’t recall any.”

“So, Joy received a salary that was direct deposited?”

“Yes.”

“Mr. Segal received a salary that was direct deposited?”

“Yes.”

“And the two of them also received money—cash—from Near North that was not direct deposited, but given to them personally?”

“Yes.”

“And, do you know, when you gave them that money, whether they used it for a business expense of the company or a personal expense for themselves?”

“Generally, I didn’t know.”

“You didn’t know? Did Mr. Segal ever say to you: ‘The money that you’re giving me, that isn’t my direct deposit salary now, I want you to hide that money so that it doesn’t look like it came to me?’”

Here was Watkins’s golden opportunity to bury Segal—to confirm that they were, as the prosecution had contended for more than a decade, engaged in a conspiracy to cheat the IRS. But that wasn’t the truth.

“He never said that to me,” Watkins said.

Comeau pressed Watkins: “Did he ever say to you: ‘The money you’re giving to me, that is not my salary—now, I’m talking about the years 1999, 2000,

2001—did he ever say to you, ‘Don’t post that money to my draw account, post it to something else, whatever you like?’”

“No. He never said that.”

“Did he ever say, ‘Don’t post it to my draw account—put it—call it postage?’”

“No.”

“Did he ever say to you, ‘I don’t want to pay taxes on the money that I’m receiving that’s not my salary, the additional money?’”

“No.”

“Did he ever say to you, generally at all, during the years 1999, 2000, 2001: ‘You know, I really don’t want to pay tax on the money I receive from Near North?’” (Segal had offered evidence at his trial that he annually added to his W-2 and income tax returns an estimated amount of income in the event some expenses were not posted to his draw account—exculpatory evidence that the government had ignored.)

“No,” Watkins said.

“Did he ever ask you to help him conceal the money he was receiving from Near North?”

“No.”

“Did he...conspire with you to somehow defraud the government when it came to taxes?”

“No.”

“Did you ever overhear him conspiring with anyone during those years?”

“No.”

“To evade taxes?”

“No.”

“Did you know that one of the counts that he was indicted for was conspiring to defraud the government and filing false returns?”

“No.”

“Did the government, prior to Mr. Segal’s indictment, ever come to you...and say, ‘One of the things we’re going to charge this man with is cheating on his taxes or conspiring. Do you have any evidence relevant to that?’”

“No.”

“They never asked you questions about that?”

“No.”

“And if they had asked you questions about that, if they had, would you have been able to provide them with evidence that would show he was conspiring to defraud on his taxes?”

“No, I don’t think so,” Watkins replied. (This statement refuted the government’s Exhibit #5, a document Segal believed had been fabricated.)

“Did the government ever tell you why it was they didn’t call you as a witness in Mr. Segal’s case?”

“Dean Polales...said, ‘The case is going so well against Mr. Segal, we don’t need you to testify, so we’re not going to call you.’”

“They never said anything to you like, ‘We don’t think you would make a good witness—that you would fall apart?’”

“I don’t recall that, no.”

Of course, if he had been put on the witness stand, Watkins would have been forced to admit he knew nothing about Exhibit #5.

Watkins admitted that he was responsible for providing the financial information to the individuals who prepared the tax returns for Segal and his wife.

“Did Mr. Segal ever say to you, ‘Don’t tell them about the money I received other than my salary?’” Comeau asked.

“No,” Watkins said.

“Did Mr. Segal ever say to you, ‘Don’t give the return preparer the postage account because they might inquire what all that money is there for?’”

“No.”

“If Mr. Segal never told you to post an item to postage, why did you ever post items to postage?”

“He did one time, many, many years ago,” Watkins said. “He just came and he got a small amount and he said put it to postage. And then, many times after that, when he would come, he wouldn’t say what it was for, I didn’t know what to do with it.”

“So,” Comeau asked, “You thought: ‘Well, I don’t know what to do with this. I’ll put it to postage?’”

“Correct,” Watkins said.

“And the only time he ever said to you, with a very small dollar amount, put it to postage was many, many years prior to 1999, 2000 and 2001?”

“Yes.”

“He had never, ever, ever said that to you again?”

“Never verbally said that to me, no.”

Watkins went on to explain that Segal didn’t know that he was embezzling from Near North and when confronted by Segal, Wish, and Silets, he was scared of getting into trouble.

“I guess it would be fair to say Mr. Segal never came to you and said, ‘Hey, why don’t we embezzle some money from this company together?’” Comeau said.

“No, he never said that,” Watkins replied.

“Would you think that when Mr. Segal took money out of the accounts, other than for his salary, that he was— Did he say to you, ‘I’m doing this because I’m embezzling from the company?’”

“No.”

“Did he say, ‘I’m doing this because I’m trying to conceal it from my income taxes’?”

“No.”

“Do you remember the day you were fired?”

“I don’t remember the day.”

“Do you remember why you were fired?”

“I believe some changes were made to my initial statement or something that [FBI agent] Pat Murphy suggested, and then [Segal] didn’t approve of those, and so he fired me.” Watkins had worn a wire and attempted to set up Segal by changing the statement in his original draft affidavit as well as seeking to inculcate Segal with a series of false, set-up facts.

“Do you remember Mr. Segal...yelling at you...about why you would have posted items to postage?”

“I don’t recall him ever yelling at me for that,” Watkins said—even though it was clear that Comeau knew that to be false.

“Can you think of anything that would indicate in any way that [Segal] wanted to cheat on his taxes in 1999?” Comeau asked.

“No,” Watkins said.

“2000?”

“No.”

“2001?”

“No.”

So there it was.

Watkins affirmed under oath that he’d never conspired with Segal to defraud the IRS and had no knowledge of Segal ever cheating on his taxes. It was inconceivable to Segal that the prosecutors who owned Watkins could not have

known that to be the case. A failure to disclose it to the defense certainly would have been egregious prosecutorial misconduct. And now it was patently clear why the prosecution had never called Watkins as a witness at the trial.

Days later, Segal received a call from IRS counsel, who suggested that the government was prepared to concede the fraud and collection assessment. Segal told the official that while this was great news, he would prefer to continue on with his discovery. He had already served subpoenas on McNichols and other government witnesses who had lied during the criminal trial, including Agent Rogoz, who had given the questionable testimony about Exhibit #5.

The IRS attorneys initially did not object to Segal's request to depose Hogan and Polales, but then insisted that Segal petition the court for an order. Before things went any further, however, the IRS sidestepped the issue entirely and did something what would have been inconceivable before that deposition of Watkins. The case against Segal was dismissed and closed.

The order, filed in U.S. Tax Court, said, "There are no deficiencies in income tax due from the petitioner for the years 1999, 2000, and 2001" and "the petitioner is not liable for the fraud penalty...for the years 1999, 2000, and 2001." As a result, a \$1.1 million tax lien was vacated and Segal received a refund of more than \$25,000.

The civil case had been based on the exact same facts and evidence that had been presented by the prosecution during the criminal trial. Now, the IRS had determined that evidence was not enough to sustain a civil judgment which carries a lesser burden of proof than the beyond a reasonable doubt standard of a criminal proceeding.

As much of a victory as it seemed, there were echoes of disappointment for Segal. There would be no sworn depositions of Takeover Group member McNichols and IRS agent Rogoz.

Segal later was informed that Hogan had gone to the IRS counsel's office to challenge Segal's intention to take those depositions. After the tax court dismissal, Segal learned that Hogan was so enraged that he filed an internal complaint accusing Comeau of failing to do a proper job and implying that he'd taken money from Segal. As a result of that outrageous act—which, to Segal, seemed just another example of Hogan's vindictiveness—Comeau was told to stop talking to Segal.

This prompted Segal to fire off another letter to J. Russell George, U.S. Treasury Dept. Inspector General for Tax Administration, saying that he understood that an investigation of the IRS and prosecutor misconduct had been opened.

“This ruling adds urgency to the investigation of wrongdoing by IRS agents that was outlined in my previous letter of July 18, 2013, because these agents, working with prosecutors, had access to government investigative records, including wiretapped conversations between my defense attorney Harvey Silets and Watkins in which the latter acknowledged that he had no authorization or direction from me for the cover-up of accounting transactions related to his embezzlement. The deposition and other facts submitted to the IRS Counsel goes to support the knowledge and cover up of multiple exculpatory evidence that was misrepresented and interfered with.

“Instead of refusing to participate in a wrongful prosecution and reporting the pressure and misconduct by the U.S. Attorney's Office, IRS agents ignored multiple material exculpatory evidence and authored incomplete and inaccurate IRS memorandums designed and directed by other government parties to cover up the exculpatory evidence obtained through misconduct.

“As my previous letter shows, IRS agents involved in my case became accomplices of misconduct by lead prosecutor AUSA William Hogan and ex-

AUSA Dean Polales, by authoring several memos that misrepresented exculpatory evidence.

“As much as I was pleased, after my long ordeal, that the U.S. Tax Court had dropped the civil tax fraud charge and penalties, my concern is that the Tax Court had ordered depositions of several agents who had aided Hogan in manufacturing the...Klein Tax Conspiracy charge. Had the proceeding continued, I believe statements the IRS agents would have made under oath would be truthful and would establish the crucial facts that would aid your investigation. Truthful statements would confirm that exculpatory evidence was covered up and that the prosecution manipulated IRS agents to assist them in their goal.

“The actions of these IRS agents under pressure and misdirection (by) AUSA Hogan and ex-AUSA Polales added years to a prison term that was based on a wrongful conviction, which extensive evidence showed misused the IRS to pile on vindictive punishments after I exposed related misconduct that led to my wrongful conviction.

“Because the District Court’s statement at my trial acknowledged that no customer or insurance company served by Near North suffered a loss, in order to ratchet up my punishment and add years to my sentence, Hogan enlisted IRS agents in creating the Klein Tax Conspiracy charge. I was indicted for the sole 18 U.S.C. 371 Klein Tax Conspiracy and no allegations or conviction for tax evasion which speaks volumes to the motivation of the prosecutors and unusual sole conspiracy indictment.

“The manufactured...Klein Tax Conspiracy charges and conviction were but one example of Hogan’s vindictive actions involving the IRS. In recent months, it is my belief that AUSA Hogan has inserted himself into the Tax Court proceedings, demanding that IRS counsel increase the proposed penalties for the

civil charge which the IRS and the Tax Court now acknowledge had no basis in fact.

“To cover up the previous misconduct that led to my...Klein Tax Conspiracy conviction, Hogan attempted to interfere with the recent court-ordered depositions of IRS agents and other witnesses involved in my case, such as telling the IRS legal counsel’s office that Segal’s subpoenas could be invalid. Hogan summoned IRS counsel to meetings in his U.S. Attorney office on multiple occasions to urge them to find more tax liability in my case and he berated IRS counsel for allowing discovery in the deposition of IRS agents. It is my belief that at the most recent meeting, when IRS counsel was called to Hogan’s office, the IRS agents who were scheduled to be deposed were already seated in his office, no doubt having received instructions from the prosecutor. With IRS counsel present, Hogan raised the issue that the IRS agents who testified at my trial had information that they learned through the grand jury and should not have to be deposed. For multiple reasons, this argument is not valid.

“Your decision to open up an investigation has been further validated by the actions of the IRS counsel’s office who followed the evidence and ignored the pressure from AUSA Hogan and followed the evidence to drop the manufactured civil charge. I will provide a copy of the deposition of Daniel Watkins and share other evidence as to the issues of the IRS agents and the order of the Tax Court, for I have requested to meet with the two investigators who met with me last year when your office began looking into these matters. I would hope that under this recent development, your investigators would meet with me at any time.

“Given recent allegations and questions raised about the misuse of the IRS for retaliatory or political purposes, it is crucial that the investigation continues and establishes how the IRS will not be allowed to be misused to aid misconduct in a wrongful prosecution. Your respected office is charged with holding the IRS

accountable for their actions and several news organizations have had an ongoing interest in how my case has been handled. It is important for your office to maintain the confidence of the public and the reputation of the IRS.”

Finally, Segal urged, “Now is the time to enable the IRS agents who were manipulated in my case to come forward and provide a truthful account of how its processes were misused and to insure that what happened to Michael Segal will not happen to others, and provide support for those agents and IRS attorneys who would stand up and repudiate such unlawful conduct.”

And so, at least in one segment of the prosecution’s case, Segal’s assertion of innocence was vindicated. But as of this writing, no one in the IRS had been publicly disciplined, nor had there been any explanation of the findings of the Inspector General’s office as to who was responsible for the extra two-and-a-half years of incarceration that Segal was forced to endure for a manufactured crime.

Although the IRS had, by dismissing the civil tax case, acted to correct an injustice against Segal, the failure of the Inspector General of the IRS to investigate the violations of law and hold those involved, including Hogan and Rogoz, accountable indicated to Segal yet another failure of checks and balances at the federal level.