

### **INTRODUCTION – THIRD PARTY DRAFT**

Segal/NNIB original prosecution and conviction affirmed by the Appellate court, was 1346 dishonest services, federal mail fraud. The conviction was about the compliance of one or more obscure and esoteric Illinois insurance accounting regulations and record keeping regulations that provide for no criminal penalty if no loss and similar statutes in only 25 other states.

Most people are unaware that Judge Castillo who presided at the trial and ruled in the record that,

"Segal's misconduct with the PFTA account did not result in a loss to his clients and looking to the economic reality of what occurred here and there was no loss." (Ref. Line 10-12, page 15 sentencing hearing trans.)

"Adopted, that there was no evidence the defendant intended to defraud either the insurance clients or the insurance companies by his illegal use of the PFTA account." (Ref. PSR report, Line 747, page 22)

"Given the complete absence of evidence, we conclude no rational jury could have found that the defendants made a false statement in connection with any financial reports or document presented to the Illinois Department of Insurance and there was no evidence as to any potential influence to a state regulatory." (Ref. Federal District Court Opinion, Pg. 9, 12/13/04)

For forty years, every customer got their insurance and every insurance company got paid. Near North grew to be the 5th largest independent brokerage in the U.S. as a result of its 950 of its associates hard work and dedication. At Segal's trial the court accepted the government's motion that the destruction of any scope of Near North could not be presented to the jury which was in fact destroyed under governments RICO superseding indictment.

In addition, every government witness stated, they were not aware of one transaction of a misrepresentation or a non-disclosure. After waiting for 17 months for a sentencing hearing, Segal was given a 10-year sentence and the forfeiture of 15 NNIG companies and a personal forfeiture of \$30M. The harsh sentencing raised questions in the legal and insurance communities.

The insurance and legal community raised further concern as to the motivation of the governments jurisdiction as to the state insurance regulation as to being in conflict with Congress' McCarran-Ferguson congressional mandate. The Seventh Circuit's reliance on violation of the Illinois insurance regulation as the foundation for a federal mail/wire fraud conviction runs afoul of the McCarran-Ferguson act. Congress specifically precluded the application of a general federal statute to the business of insurance. The post-Skilling 1341 harmless error 7th Circuit ruling places the jurisdiction in further direct conflict.

The four superseding indictments and prosecutions became a media circus as to the first high profile prosecution of the new AUSA office management. The superseding indictment sent tracked as to the timing of pre-trial motions and civil suit proceedings by NNIB's independent board of directors

consisting of ex-FBI station manager, ex-USA/North district of Illinois and past CEO of Fireman's Fund insurance. The board sought to protect the assets of its company and licensing status. The record is clear that a group of ex-employees became government agents, after being rebuffed and a \$35M stock leverage scheme. Both prior to and after Segal's unusual arrest, it was proven that a massive 8 month cybercrime intrusion and other unlawful conduct by the takeover group.

In June 2010, the Supreme Court ruled that the dishonest services foundation for convictions as to Segal/NNIB can no longer be a crime. The 7th Circuit in spite of the government's objection agreed to allow a filing as to the application of a Skilling mandate to Segal/NNIB under its ongoing forfeiture remand appeal that was before the court.

In post-Skilling briefing to the Seventh Circuit, the government concedes that their "honest services" theory of prosecution is legally flawed and cannot support federal mail/wire fraud conviction. However, the government alleges that Segal's jury could not have found an "honest services" fraud without simultaneously finding a scheme to deprive a victim of money or property through a material misrepresentation in violation of 18 U.S.C. §§ 1341.

In an attempt to block Segal's constitutional rights under Skilling the government now argues that they never presented an "honest services" theory to the jury, the only theory of guilt that they actually presented was the taking of money/property through misrepresentation.

The Supreme Court has held that when it is impossible to determine whether a defendant was convicted on a legally invalid basis that the conviction must be reversed. The only exception is when the government can prove beyond a reasonable doubt that the error was "harmless"--that the jury must have relied upon a valid theory of guilt.

Segal's jury was actually presented with multiple theories of guilt, which did not require a finding of a scheme to deprive another of money/property through misrepresentation, Segal's conviction should have been summarily reversed.

The rule of law from Judge Castillo rulings did not change under the application to apply Skilling for relief. In addition, to 1346 ruled unconstitutional under Skilling the Supreme Court in 1999 settled other issues as to the criminal elements of regular 1341 mail fraud, deprivation of money and property. The required element of material misrepresentation as to 1341 mail fraud cannot be substituted by a breach of a state fiduciary statute under 7th Circuit Black.

However, when the Supreme Court threw out the "honest services" foundation for Segal's conviction, the government fell back on their specious accounting theories, falsely representing that they show cash deficits. The problem is that when the financials are subjected to cash-on-cash accounting analysis, it is clear that the inherent assumptions of the accrual and disputed accounting evidence have falsely established a crime that never existed.

Unfortunately, the sensationalism and stigma from my high profile trial continues to haunt me as prosecutors now try to retroactively construct a crime justifying my conviction based on theories of proven non-cash or trust accounting that were never presented to the jury.

The evidence needed to solely prove a pecuniary transaction to support a taking of money and property by misrepresentation, is solely attributable to finite accounting and legal statutes and other objective conclusions that can provide only one answer. There can only be one answer as to cash accounting not subject to dispute or opinion, the accounting evidence as to satisfying a pecuniary 1341 is accounting math equations as opposed to accounting evaluation or opinions. Accounting conclusions are not evidence unless their supported by working papers and peer review accepted accounting standards. The federal rules of evidence treat accounting similar to a technical science and must conform to the accepted standards.

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In Denying Segal's appeal with respect to the effect of *Skilling v. United States* on Segal's conviction for honest services fraud and money/property fraud, the panel has converted the violation of Illinois insurance regulations, which, after *Skilling*, should not ever be an indictable offense, to money/property fraud without any evidence that Segal lied to any insurance client of Near North or any insurance company that provided coverage for Near North's clients. Further, at sentencing, the district court concluded "there was no evidence that [Segal] intended to defraud either the insurance clients or the insurance company" by his violations of the Illinois insurance regulations. The panel did not account for *Skilling* and found Segal guilty of a non offense. Post *Skilling*, it is not a federal crime to violate a state insurance regulation. The only scheme Segal was charged with was a scheme to violate the State of Illinois' insurance regulations. Absent a violation of these regulations, Segal did nothing wrong.

In a related vain, and assuming that post-*Skilling* the violation of a State of Illinois insurance regulation could support conviction of money/property fraud, the panel did not account for the holding in *Neder* and concluded, without testimony from any Near North insurance customer, and any insurance company that provided them coverage that (1) they were lied to about Near North's PFTA being in balance, or (2) it was material to them that Near North's PFTA was in balance. *Neder* concluded that Congress implicitly incorporated the common-law meaning of fraud, including but not limited to its requirement of materiality, into the [mail fraud statute]." *Id.* at 23. The panel, however, denied that *Neder* held what it did and accepted the government's incomplete and inaccurate interpretation. According to the panel, *Neder* merely required the government to establish one element of common law fraud-materiality-and not the other elements. Panel op. at 5-6. (1)

The panel adhered to its earlier rulings that the Government need prove neither actual nor intended harm to establish pecuniary mail fraud. *Id.* at 6. It did not prove either. These rulings did not consider significance of *Neder* and are inconsistent with it. They are also inconsistent with the decisions of other Courts of Appeals.