

June 2009

Welcome to this newsletter which aims to provide you with interesting news and useful information on money laundering and related topics.

BERNIE MADOFF'S MAXIMUM SENTENCE

Bernie Madoff, the US fraudster, has been handed the maximum sentence available to the judge - 150 years imprisonment. He is also required to forfeit US \$170 billion (not that he has anything like that, the figure is based on the total amount of funds said to have passed through his companies).

Madoff had pleaded guilty to the criminal offences for which he was sentenced and had expressed remorse for his actions. One cannot help but feel that, had he been sentenced in an English court, he would have received something less than the maximum sentence.

The judge heard heart-rending victim statements before sentencing, and a plea from Madoff's lawyer to "set aside the emotion and hysteria" surrounding the case. That plea seems to have fallen on deaf ears.

Leaving aside the maximum sentence under US law - hardly one that a 71 year old man can be expected to complete - or the stupendous forfeiture order, it is worth noting the speed with which the case has passed through the US criminal justice system. On 9 December 2008 Mr Madoff was a highly respected figure. On 11 December he was arrested. By mid-March he had pleaded guilty and on 29 June 2009, just over 6 months after the criminal investigation commenced, he has been sentenced. Of course, the sentence may be subject to appeal . . .

IN THE (ENGLISH) COURTS

There have been a couple of interesting decisions in the English courts this month. Joseph Clarke had pleaded guilty to concealing criminal property contrary to s327 Proceeds of Crime Act 2002. He was given a conditional discharge. The prosecution then applied for a confiscation order, and the Crown Court judge duly obliged. The Court of Appeal, quashing the confiscation order, has held that the Crown Court has no power to make a confiscation order against a defendant following a conviction for which the defendant receives an absolute or conditional discharge ***R v Clarke [2009] EWCA Crim 1074***. It may be thought unlikely that a prosecutor would seek

a confiscation order in such circumstances but, as it happens, a very similar case landed on my desk only recently. I cannot say more as the confiscation hearing in that case has not yet taken place.

Another Court of Appeal decision this month dealt with determining the 'benefit' for confiscation purposes of an individual, Mornington Stafford Seager, who acted as a director of a company whilst prohibited from so doing under the Company Directors Disqualification Act 1986. The business of the company in question had been entirely legitimate and beyond reproach - the only problem was the contravention of the director's disqualification. The Court held, overturning the confiscation order made in the Crown Court, that the individual's 'benefit' was limited to the salary etc he had received from the company ***R v Seager [2009] EWCA Crim 1303***. The judge in the Crown Court had been wrong to base his 'benefit' figure on the turnover of the company.

In the course of the judgment the Court of Appeal took a swipe at an earlier decision in the case of R v Neuberg, holding that the decision there was inconsistent with House of Lords decisions in leading confiscation cases. I am no lawyer, but it seems to me that the Court of Appeal slightly lost the plot when it criticised the Neuberg decision, since that case dealt with a rather different situation (in which Mrs Neuberg's 'benefit' was held to be the turnover of her business as a self-employed sole trader, not as a company director).

COULD A COMPANY BE SUBJECT TO CONFISCATION?

My attention has been drawn this month to the possibility that a company could be subject to confiscation where it is convicted of one or more offences. The thought had never occurred to me previously and I have never seen it in practice.

But having thought about it, I see no reason why a company could not be subject to confiscation in the same way as an individual. That could prove interesting!

ONLINE DISCUSSION GROUP ON ACCOUNTINGWEB

For accountants among you, the website AccountingWEB www.accountingweb.co.uk has recently been redesigned and now boasts a 'Discussion Group' on money laundering and crime, which I administer. On there you will find an article 'Tipping off - a serious risk?' dealing with the relatively new law on tipping off following amendment to the Proceeds of Crime Act 2002 in December 2007. You may find it useful.

TRADING STANDARDS GET THEIR MAN

When it comes to serious crime your thoughts might not first turn to your local authority's Trading Standards Department. But, like the Canadian Mounties, Trading Standards get their man!

So it was, earlier this month, that 44 year old Adrian Hemmingway, a convicted car-clocker, found himself on the wrong end of a £2.7 million confiscation order.

The reality is that local authorities, the Department for Work and Pensions, and other non-police prosecutors are making more and more use of confiscation.

Be afraid, be very afraid!

If you require any assistance or have any queries concerning issues related to forensic accountancy, proceeds of crime or money laundering contact d.winch@AccountingEvidence.com or visit our website www.AccountingEvidence.com.

Kind regards

David

David Winch, B.Com., F.C.A.
Accounting Evidence Ltd
Well House
Broughton in Furness
Cumbria LA20 6HS

T 01229 716651

M 07816 767154

E d.winch@AccountingEvidence.com

W www.AccountingEvidence.com

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Accounting Evidence Ltd

Incorporated in England. Company number 4979457

Registered office: Well House, Broughton in Furness, Cumbria LA20 6HS