

Paychecks or Loans?

By Don Bauder

Two luxury-loving lawyers go on trial in superior court September 24 for fraud, embezzlement, and tax evasion. They claim that monies they allegedly stole were loans, so they owed no taxes on the loot. For prosecutor Steven Davis, deputy district attorney, history seems to be repeating itself. Three decades ago, Davis successfully prosecuted San Diego's most powerful wheeler-dealer, C. Arnholt Smith. In June, at a preliminary hearing in the upcoming case, Davis explained that Smith had paid himself bundles of money from entities he controlled. "When it came time to pay his taxes, he said it was a loan. We charged him with income tax evasion, and that was the jury's verdict. This is really no different."

The two lawyers are Paul Roesser, who lives in a \$3.1 million home in Rancho Santa Fe, and Roland Colton, a former San Diegan who now lives on a \$4 million estate in Laguna Niguel. Colton knows trouble: next year, he will go on trial for bankruptcy fraud in federal court here. He is charged with concealing \$1.5 million in assets when he filed for bankruptcy in 2001; among those assets is a big château in France. In 1983, Colton was convicted of assisting in the filing of a false income tax return; he was sentenced to 60 days in confinement.

In the superior court case, to be tried before Judge Charles Rogers, Colton is also charged with money laundering. According to the government, he regularly turned his ill-gotten gains into cashier's checks "so [the money] couldn't be traced," Davis told the court. The judge in the preliminary hearings threw out the money-laundering charge, but Davis has the ability to reintroduce it. One of those cashier's checks went to pay off a loan on a new \$100,000 Jaguar for his wife, according to Davis.

The lawyers had two businesses in the same location in Del Mar: their law firm, Colton & Roesser, and their insurance agency, Insurance Ventures. The insurance agency arranged to sell homeowners' insurance issued by Vesta Fire Insurance. The two lawyers were to deposit insurance premiums in a trust account for Vesta. Instead, those funds were commingled with other funds. Consequently, the attorneys withdrew far more than they were entitled to, according to the government.

Colton and Roesser were "just betting on the come," said Davis in the preliminary hearings. "They were taking money that they knew they were not entitled to, and they were hoping that at the end of the program, it would all balance out. That is no different than a teller in a bank saying, 'I am going to take \$100 out of the till today, and I am going to Viejas tonight, and, hopefully, I will parlay it into \$200 when I come back. Tomorrow, I will put the money back into the till.' "

All told, charges the prosecution, Colton and Roesser pocketed \$1.42 million that belonged to Vesta. The attorneys roughly split that sum between themselves, says the government. Colton converted much of his share to cashier's checks and spent it on lavish living, including Las Vegas gambling trips, charges the government. Roesser sent his money to a brokerage house and his bank account. Davis wondered in court whether some of the money may have landed in offshore tax havens, but no such charges were made. Roesser has been the registered agent for two entities in the Netherlands Antilles, but Davis hasn't brought this out.

One method by which the lawyers allegedly embezzled the funds was by taking a percentage as soon as a policy was written rather than when the money was collected, according to the prosecution. The contract with Vesta clearly says the lawyers' cut is based on money collected, not on policies written, but defense lawyers say policy addenda smoke up that issue.

Vesta originally charged that its money was missing. It took the matter to the California Department of Insurance, which passed it to the district attorney's office as a criminal matter. The California Franchise Tax Board determined that the pair had evaded taxes.

Two of San Diego's highest-profile defense attorneys represent the lawyers. Colton is being defended by Michael Pancer, who represented former mayor Roger Hedgecock and former councilmember Ralph Inzunza in corruption trials. Roesser is represented by Charles Goldberg, who defended Ponzi schemer J. David (Jerry) Dominelli and former port commissioner David Malcolm.

At the preliminary hearings, the defense argued that a back-office firm hired by the lawyers had bungled the bookkeeping. Also, Vesta, now in bankruptcy, had been downgraded by an insurance-rating firm, essentially destroying Insurance Ventures' business and prompting a lawsuit by Colton and Roesser. "A very aggressive lawyer representing Vesta...was faced with a valid lawsuit," argued Pancer in the preliminary hearings. That lawyer took the case to the Department of Insurance, which did not understand the complexities. The whole thing is a contract dispute, says the defense. Whether the lawyers were to get their share of written or collected premiums is ambiguous in the contract, the defense claims. "Experts from the insurance industry" will deflate the prosecution's claims on that point, says Goldberg in an interview.

Says Pancer of the money-laundering charge against Colton, "He has a wife and five children, has gaming patents, clients in Vegas -- legitimate business reasons to go to Vegas. The family took vacations there." Colton didn't conceal what he did with the money, says Pancer.

The defense has presented promissory notes indicating that payments to Colton and Roesser were loans from Insurance Ventures, not income, and therefore were not taxable.

At the preliminary hearings, deputy district attorney Davis jumped on that claim. "These alleged notes are themselves proof of the fraud," said Davis, charging that Colton and Roesser cooked up the notes to avoid tax liability. "This is Colton and Roesser as the principals of Insurance Ventures negotiating with Colton and Roesser as the so-called attorneys for Insurance Ventures." The concocting of the promissory notes was "a thinly veiled contrivance."

But not an original one. C. Arnholt Smith used it in the 1970s.

Comments

*Posted by **Billy! Bob!! Henry!!!** on 09/5/07 @ 10:14 pm*

Loans must be paid back. If they were loans, and did not pay them back-then it was income, mischaracterized as a loan. This is not going to fly in court.....As for the defense lawyers...Hedgecock was one lucky son of a gun, and escaped serious charges on appeal, Inzunza is now a convicted felon, Dominelli went to the big house and Malcolm is now a convicted felon too, don't recall if Malcom had to do any time though-so I hope the defense lawyers make changes in their legal strategy or these two guys could be in for a rude awakening.....

*Reply by **Don Bauder***

Prominent defense lawyers such as Goldberg and Pancer take high-profile cases, even though the chances of getting the client off appear low. Goldberg, incidentally, dropped off the Dominelli case before it was over. Best, Don Bauder

*Posted by **Billy! Bob!! Henry!!!** on 09/5/07 @ 10:27 pm*

Don, whatever became of Nancy Hoover Hunter?????? And Dominelli too????? Seems like ages ago, well, I guess it was AGES AGO!

*Reply by **Don Bauder***

After her wealthy Montecito husband died, Hoover Hunter returned to San Diego and married a Fletcher. At the time I did a column on this Sept. 8, 2005 (which you can retrieve on the Reader website), they had a home in Rancho Santa Fe and condo in Coronado Cays that they were putting up for sale, and also spent a lot of time in Del Mar. Dominelli got out of prison after a long stretch and was released to his parents in Chicago, but I could not determine at that time how his health is doing. Best, Don Bauder

*Posted by **Sandra** on 09/11/07 @ 11:39 am*

Thank you Mr. Bauder. A very interesting story, but no surprise to those of us who know or have dealt with Mr. Colton. Perhaps a good follow up would be the story about the attempts of Roland Colton's ex-wife, in San Diego Superior Court, to collect years and years of child support which have gone unpaid. This case might be worth looking at as well.

*Reply by **Don Bauder***

Your suggestion is a good one. It sounds like it would make very interesting reading.
Best, Don Bauder

*Posted by **Billy! Bob!! Henry!!!** on 09/11/07 @ 11:01 pm*

Mr. Colton could not have a valid law license if he was in non compliance with child support payments. That State Bar, and virtually ALL CA. licensing agencies (100's of them) simply will not grant ,or renew, any state license of any kind when there is non compliance with child support orders. This would also stop Mr. Colton from getting a law license anywhere in the country, since no state agency will grant a license while the applicant is in non compliance in any other state.

*Reply by **Don Bauder***

I do not have an answer to the alleged non-compliance nor do I know the Bar rules on such matters. It is worth checking. Best, Don Bauder

*Posted by **william walker** on 10/24/07 @ 10:02 am*

Mr. Bauder, What ever happened with this case? Is it still pending? Thanks

*Reply by **Don Bauder***

I have put in a call to find out. I do not know if it has been resolved. Best, Don Bauder

*Posted by **curious** on 11/1/07 @ 6:04 am*

Have you found anything out yet...I understand that Roesser's home burned to the ground in last week's fires.

*Reply by **Don Bauder***

The case was delayed going to the jury because of the fire. It could go to the jury this week. Best, Don Bauder

*Posted by **William Walker** on 11/6/07 @ 8:44 am*

I heard the same about Roesser's house burning. Any further movement on this case? Thank you

*Reply by **Don Bauder***

During the week of the fires, I talked to the prosecutor to get an answer to your query. He said the fires had delayed matters but it might go to the jury the next week. I'll check again. Best, Don Bauder

*Posted by **EX Mrs. Compliance** on 11/6/07 @ 10:27 am*

Regarding Mr. Colton, imagine being in a divorce dispute with someone with these ethics. He is self employed, prepares his own taxes (graduated in accounting from the U of U, worked as a tax attorney for years) under oath during depo questioning, answers "attorney client privledge" when asked about assets, does not submit a decloration of income and assets to the family court and a judge that responds "I understand" when it is pointed out that at the current order of \$1000.00 amonth does not even cover the interest on the more than \$420,000 that is owed. Welcome to my world!

*Reply by **Don Bauder***

I never covered the divorce side of this case in my column on it. Sounds like it would have been more exciting reading than the fraud case. Best, Don Bauder

*Posted by **Defrauded by VESTA** on 11/7/07 @ 10:20 am*

Things are not always as they appear. The main point of this case is that Colton and Roesser took funds out of a trust account they controlled to which they were not yet entitled. The problem with the prosecution's argument is that the trust account was managed by a Fortune 400 Company worth hundreds of millions of dollars. Give me a break! It is like saying that a relatively small company could tell Bank of America how to disburse funds. The whole argument is ludicrous and should have been dismissed by the Judge. The only reason this case came to trial is that a powerful law firm (one of whose partner's was the former California Insurance Commissioner) prevailed on the California Insurance Commission to begin a prosecution against Colton and Roesser. Colton and Roesser were suing VESTA, a client of the powerful law firm, for \$40 million and this was an intimidation tactic.

*Reply by **Don Bauder***

I mentioned some of your points in the article. I interviewed two defense lawyers and they raised the points that you raise. Best, Don Bauder

*Posted by **sunny boy!** on 11/8/07 @ 9:55 am*

I understand this case ended with the jury "hung" at 7 to 5. Will there be a retrial?

*Reply by **Don Bauder***

I just don't know. I will try to find out again. Best, Don Bauder

*Posted by **Curious Goerge** on 11/13/07 @ 11:39 am*

I heard there was a civil trial in this matter. How did that trial end up?

*Reply by **Don Bauder***

Hung jury, 7-5 for acquittal. The prosecutor is on vacation, but I doubt will try again if the first jury was so unconvinced. Best, Don Bauder

*Posted by **Defrauded by VESTA** on 11/14/07 @ 3:31 pm*

As I understand it, all the civil matters were settled. The \$40 million suit against VESTA by Colton and Roesser was not appealed since VESTA declared bankruptcy. It had been originally dismissed based on allegations made in the criminal trial. The criminal trial allegations were used as a sword to defeat the civil litigation. I had heard from another source that the Jury verdict was 8-4 for acquittal.

*Reply by **Don Bauder***

The DA's office tells me it was 7-5 for acquittal, but who's counting? I can't tell you about the civil litigation. Best, Don Bauder

*Posted by **Defrauded by VESTA** on 11/21/07 @ 1:29 pm*

The case was dismissed by the Judge and all charges dropped. The Judge also indicated that the VESTA witnesses were not credible and this was a contractual dispute and criminal charges should not have been filed.

*Posted by **sonny boy** on 11/23/07 @ 9:16 pm*

This was a criminal case. I had the impression that these attorneys had already lost in a civil case. Does anyone know about the disposition of their civil case?

*Reply by **Don Bauder***

I don't know the disposition of the civil case. Best, Don Bauder