SUPREME COURT FINDS BANK FRAUD NEED NOT TARGET BANKS; RESOLVES CIRCUIT SPLIT IN PROSECUTORS' FAVOR

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Government Enforcement Alert

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On Monday, the Supreme Court issued a unanimous opinion in *Shaw v. United States*[1], holding that a violation of the Bank Fraud Act[2], does not require proof that a defendant intends to target a bank, but only that defendant's fraudulent actions involved accounts controlled by a bank. The Court's ruling marks the latest victory for the government in the financial fraud enforcement space.

BACKGROUND

The Bank Fraud Act makes it a crime to "knowingly execut[e] a scheme

1. to defraud a financial institution; or
2. to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises."

Lawrence Shaw was convicted under the first clause of the statute after using Stanley Hsu's account numbers and personal information to transfer funds from Hsu's bank account to accounts Shaw set up at other banks, eventually transferring US $300,000 of Hsu's money to himself. The district court refused to give Shaw's proposed jury instruction that would have required a finding that Shaw intended to deceive and cheat the bank itself to support a conviction.

The Ninth Circuit similarly rejected Shaw's argument on appeal, highlighting its disagreement with the majority of circuit courts that required that an intent to victimize a bank be shown for liability under Section 1344(1). The decision was appealed to the Supreme Court.

THE SUPREME COURT'S DECISION

A unanimous Court adopted the Ninth Circuit's view, finding that Section 1344(1) only requires proof that a defendant's alleged fraudulent actions involved accounts controlled by a bank. The Court's primary reasoning was that a bank has property rights in its customers' accounts just as its customers have certain rights. Ordinarily, the bank is considered the owner of the funds for which the customer maintains the right to withdraw. In other instances, and depending on the contract with the customer, the bank could have a possessory interest in the funds that are owned by the customer.

Under either scenario, the Court concluded, Shaw's scheme to cheat Hsu was also a scheme to cheat the bank of its property rights. "[F]or purposes of the bank fraud statute, a scheme fraudulently to obtain funds from a bank depositor's account normally is also a scheme fraudulently to obtain property from a 'financial institution,' at least where, as here, the defendant knew that the bank held the deposits, the funds obtained came from the deposit account, and the defendant misled the bank in order to obtain those funds."[3] The Court rejected Shaw's argument that he lacked intent because he did not know about the bank's property interest in Hsu's account, finding that such a requirement "would free (or convict) equally culpable defendants depending upon their property-law expertise — an arbitrary result."[4]

In addition, the Court also found that Section 1344(1) does not require either a showing of financial loss to the bank or a showing of intent to cause financial loss to sustain a conviction. Citing to both the common law and other decisions interpreting analogous fraud statutes, the Court reasoned that the proper focus was on the fraud itself, rather than the harm that resulted from the fraud. Thus, the fact that the banks involved in Shaw's scheme ultimately suffered no monetary harm because their losses were reimbursed was no defense.

Shaw did gain a small victory, however, because the Court remanded the case to the Ninth Circuit to address whether certain instructions given to the jury were proper in light of the requirement that a scheme to defraud be one to deceive the bank *and* deprive it of something of value and whether any improper instruction was harmless.

CONCLUSION

Despite the remand, the *Shaw* opinion embraces a broad reading of Section 1344(1). Its decision complements the Court's earlier decision in *Loughrin v. United States*,[5] where the Court found that Section 1344(2) does not require an intent to defraud a bank before liability can be imposed. Collectively, the decisions permit prosecutors to utilize the statute in a wide range of cases, particularly given the frequency in which financial institutions are used as a vehicle for allegedly criminal acts.

The government's ability to invoke the statute more frequently has far-reaching implications. First, the statute of limitations for bank fraud is 10 years, as opposed to the usual five years for mail and wire fraud. Second, bank fraud carries with it a maximum prison sentence of 30 years, as opposed to the 20-year maximum for mail and wire fraud. Finally, like its mail and wire counterparts, bank fraud serves as a predicate offense for liability under the Racketeer Influenced and Corrupt Organizations Act[6], as well as for the imposition of civil penalties under the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989.[7]

NOTES:

[1] No. 15-5591 (Dec. 12, 2016)

[2] 18 U.S.C. § 1344(1).

[3] Slip Op. at 3.

[4] *Id.* at 5.

[5] 134 S. Ct. 2384 (2014).

[6] 18 U.S.C. § 1961.

[7] 12 U.S.C. § 1833a.

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