

Rubashkin Sentencing Highlights

I. BANK LOSS

a. Bank's Conduct Was Responsible For Loss

- Investor Mordechai Korf testified that he offered FBBC 21.5 ó \$22 million and he was ready to negotiate more. He was ready to give cash money. However, the bank rejected this offer and made no counter-offer. They wanted the total amount of \$40 million or nothing. In the end they got a lot less than \$22 million.
- Accountant Roth testified: "If a bank makes an investment before doing extensive due diligence, it is totally their issue, nobody else's." Therefore, the loss of FB's DIP financing after the bankruptcy should not be held against Sholom. (Furthermore, Roth mentioned that the bank already received more than \$21 million in interest since the inception of this loan.)
- Roth explained that \$20 million of the original loan remained pristine, was never "corrupted" by inflated collateral; was therefore not part of the fraud, and the number \$26 million loss is therefore incorrect.
- Roth also pointed out that the bank is suing Aaron Rubashkin for \$21 million, not 29.9 million or 26.9 million.
- Roth noted that the interest of the inflated receivables totaled about \$4 million and this money should be applied to Sholom's debt to the bank. That further reduces the "26 million is losses."

b. Trustee's Conduct Was Responsible For Loss

- Aaron Rubashkin's accountant, Norman Lipshie, testified that by the bankruptcy there was between 13 and \$15 million worth of frozen inventory. (FB's auditor, Shane May, testified to these numbers as well.) Lipshie testified that this inventory was tracked by private individual storage companies.
- FBI Agent Randy Van Gent admitted that the original bankruptcy schedule showed \$85 M in assets and only \$68.5 M in liabilities, there was at least \$11 M in true inventory which could have been applied to the loan at the time of bankruptcy. Van Gent could not explain what happened to the inventory.
- Chaim Abrahams shed light on what happened to the inventory. He testified that the trustee ordered crews of men to take truckloads of frozen meat worth millions of dollars to be sold as rendering product for pennies on the dollar. The rendering company paid "a penny or 2 pennies a pound versus dollars" for tens of thousands of pounds of meat.
- Sholom Rubashkin Jr. testified that the trustees neglected millions of dollars of good receivables, which with the passage of time were probably only worth 30 cents on the dollar. He also gave specific examples of customers who were willing to settle on an amount pretty close to their account statement but were kept on being pushed off, such as Wakefern

(\$420,000) Lincoln Provision (\$115,000), and MRW (\$70,000) amongst others.

- Sholom Jr. also testified that there was also \$2,500,000 in New York receivables and \$500,000 in the Florida AR not collected due to the same passive approach in collecting them. Sholom Jr. felt that there seemed to have been an almost intentional disregard in recouping the Bank's loan.

c. Government's Conduct Was Responsible For Loss

- Steve Cohen testified that during a conference call with the trustee, the discussion came up as far as whether or not Rubashkins would be allowed to be involved in any part of an acquisition, which we were contemplating at the time. And we were told that that would be a -- that would be a deal breaker, that no Rubashkins would be allowed. In order to consider the acquisition, it would have to be without any Rubashkin personnel. He said that this reduced the value of the company by millions of dollars. "Who would know where the keys are and kick the tires and how to go forward?"
- At the hearing the government attempted to deny this through the testimony of FBI agent Randy Van Gent as well the attorney for the trustee Paula Roby. Steve Cohen was put up last minute to rebuttal Ms. Roby. Chaim Abrahams was also a rebuttal witness, testifying that during bankruptcy Agriprocessors was not allowed to do business with Cottonballs - owned by Heshy and Sholom Rubashkin, even though it would have saved the company much money.
- A number of documents proving the existence of the "No Rubashkin Edict" have been submitted to the Court. (Eichler affidavit, Daniel Hirsch Declaration, Daniel Hirsch affidavit, Daniel Hirsch letter to US Dept of Agriculture, AUSA Murphy letter to Hirsch attorney Anita Shodeen.)

Bank Loss Synopsis: In short, the Government's loss theory fails to conform to newly uncovered facts that emerged at the sentencing hearing. These disclosures prove that factors totally outside Sholom Rubashkin's control brought about the collapse of Agriprocessors. These factors include the bank's negligence, as well as the deliberate failure of government officials - including the court-appointed trustee - to invest meaningful efforts into selling the company to qualified buyers while it was a going concern. Indeed, the record strongly suggests they blocked such sale opportunities. This conduct made it impossible for Sholom Rubashkin to pay back to the bank what was due.

II. CHARACTER WITNESSES

a. Greg Sindt

- Sholom was always honest, hard working, and intelligent.
- Sholom was a family man.

b. Aaron Goldsmith

- "He was an extraordinarily generous person, a person that doesn't know how to say no."
- "I don't buy anything that he ever stole anything. It's not his nature. It's not his style. It's not what he wants."
- "It's criminal to call him a criminal."

c. Rabbi Moses Weissmandel

- Sholom was a generous, focused, honest, and religious man.
- Sholom's character was manifested in what he built in Postville: the schools, the synagogue, the grocery store, and the community as a whole.

d. Rabbi Moishe Tuvia Leif

- Sholom always wanted to be an educator.
- Rabbi Leif supplied the court with a yearbook containing Sholom's photo at a young age and his future ambition, which was to be an educator.
- Sholom was a religious, outgoing, and kind man.
- Sholom is a person of integrity. He once willingly took a substantial loss in order to comply with the ruling of rabbinic authorities that some of his products, due to a halachic problem, would have to be disposed of.

e. Kenneth Klepper

- His motivations were "to strive to make a good life for his family, for his friends."
- "There was times if I needed anything, I would just -- if I ever needed anything, I would go see him."

f. Leah Rubashkin

- Sholom has fantastic commitments to his religion, family, wife, and children.
- His personality is energetic, hard working, and loving.
- She said Sholom has a "heart of gold."
- Leah told a recent story of when Sholom and she were going to ride with his lawyers. The lawyers entered the car even though there was a young bird beneath the car. Sholom climbed underneath the car to rescue the bird.

g. Letters on Sholom's behalf

h. Video interviews of people Sholom has helped

III. EXTREME HARDSHIP OF AUTISTIC SON MOISHE

a. Susan J. Fiester, M.D.

- Sholom has a special relationship with Moishe, his special needs son.

b. Options Institute Letter:

- Sholom and his family spent weeks at The Autism Treatment Center of America in Sheffield, MA, bringing Moishe so that he could benefit from intensive one-to-one Son-Rise Program therapy.
- Sholom completed four training programs at The Autism Treatment Center of America to train to work with Moishe.
- In our observation, we saw that Sholom and his son Moishe shared a very special bond.
- When we last observed Sholom and Moishe, it was very clear that they had a sweet relationship and we noticed that Moishe responded well to his father's games, ideas and requests. It seemed that Moishe enjoyed his father's company and was motivated to interact with Sholom.
- As interactive attention span was one of our main goals for Moishe, we observed that Moishe's motivation to interact with his father was beneficial to his development.

c. Letter from Child Psychologist Dr. Hartsman

d. Greg Sindt

- Sholom had a special, caring, and patient relationship with Moishe.
- "He would take time in the afternoons to go home and read to Moishe, to assist him in his -- in his disability problem."
- "I was impressed with the patience that Sholom had with Moishe. Moishe was -- was very energetic, but Sholom would take time to work with Moishe."
- "My impression was they had a very loving relationship, a father caring for his son."

e. Leah Rubashkin

- Sholom was a fantastic father to Moishe. He never lost his patience with Moishe, which given Moishe's behavior on occasion was extraordinary.
- She said he is a "giant of a man" when describing his devotion to his autistic son that took priority over pressing business concerns.
- "You know, we use the term that he's spiraling out of his autism and that, you know, until this whole story started, you know, we've seen tremendous growth and improvement in so many different areas. And unfortunately, now we're seeing this regression that is very, very upsetting."

f. Video about Moishe

IV. ALLEGATIONS OF MISTREATMENT COUNTERED

a. Dr. Carlos Carbonera

- He visited Agriprocessors three times after the Popper article was written.
- He interviewed Agriprocessors workers ó some in Spanish ó regarding the alleged poor treatment in the plant; all who were interviewed advised of how thankful they were to be working at Agriprocessors.
- One employee repeatedly said: “Thank God we have Mr. Rubashkin.”
- “We had a tour of the plant, and I was surprised. A very modern facility. I didn't see anybody dirty” It was a very clean place, and I was very impressed with what I saw.”

b. Rabbi Moses Weissmandel

- The working conditions at Agriprocessors were as good or better than conditions in other plants.
- There were absolutely no instances of abuse of workers on the kill floor.
- The employees wanted to work overtime due to the financial compensation associated with the overtime work.
- Due to employees working so much overtime, the cost of paying overtime became so burdensome that Agriprocessors had to institute policies to limit employee overtime.

c. Kenny Klepper

- Sholom came to Klepper after hearing allegations of impropriety on Agriprocessors grounds and demonstrated deep concern.
- Klepper testified he never saw any improper behavior or abuse on Agriprocessors grounds.

d. Rabbi Moses Zeilengold

- There was a negative campaign instituted against Agriprocessors by members of PETA and the UCFW.
- Part of the campaign included disparaging Agriprocessors for their own ends.
- Rabbi Zeilengold made inspections of Agriprocessors after the allegations and determined the allegations were baseless.

e. Greg Johnson

- Although a vegetarian, Mr. Johnson became a supporter of Sholom and Agriprocessors. His interest was triggered by the unfair, negative press surrounding the case; reports that he found to be false.
- “From what I've seen in my past 30 years as working as a consultant, the Rubashkin plant, to me, seemed to be cleaner than I would have imagined. The employees seemed to be treated well, well-dressed. I mean, it was as clean as you could imagine a packing plant being. And just the entire operation seemed kind of well-organized, beyond just, you know, floors being swept or something. It just seemed like it was a well-run business.”

f. Aaron Goldsmith

- Testified that he called insurance broker together with Chaim Abrams to ask how Agriprocessors' record of worker injuries compared with national standard. He was told that their records showed that the rate of injuries at Agriprocessors was lower than the national standard.

V. MISC. TESTIMONIES

a. Casey Sturgill

- All the cattle sellers were ultimately paid.
- Only one victim impact statement had been provided.
- Rubashkin was acquitted of counts as to a number of sale barns yet the Government has still characterized some of the sellers as victims.

b. Rabbi Sholom Lipskar

- The tenets of Orthodox Judaism and the responsibilities those tenants create.
- The way in which Orthodox Jews come to understand their role in the world through scripture and family relationships.
- An Orthodox Jew's duty to his parents ó specifically his father.

c. Susan J. Fiester, M.D.

- Sholom had psychological difficulties which contributed to or resulted from his work at the plant.
- Sholom would get so frustrated he would bang his head against the wall and have crying spells.
- Sholom felt remorse for his actions.

d. Sholom Minkowitz

- Minkowitz had a trusting relationship with Sholom.
- Sholom confided in Minkowitz that he was having difficulty getting others at the plant to go along with the no-match firings.

e. Sholom Rubashkin, Jr.

- He was present during the Walkout of 2007 and sat in on a meeting with Jay Eaton.
- They group discussed the no-match issue and the fact that the law was unclear on how to address the no-match issue.

f. Getzel Rubashkin

- The Government's exhibit regarding Agriprocessors non-payroll deposits/checks into his account did not account for Sholom's personal monies he put into the business, and made no effort to render a fair accounting by examining Sholom's payments to Agriprocessors.

- Failing to make those calculations renders the government's exhibit wholly unreliable.

g. Leah Rubashkin

- She was with Sholom through episodes where he was frustrated and down about the situation at Agriprocessors.
- She said Sholom was remorseful about the fallout in Postville.
- She said the support of the larger Jewish community enabled the family to make it through.