Simmons: A Case Study

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ABSTRACT

John McGee ("McGee") was an attorney representing a class of Bruin Company shareholders who sued Astro, Inc. alleging improprieties by Astro, Inc. in its merger with Bruin Company The Court approved the settlement and PCQ, LLP, a CPA firm, was appointed to administer claims. Alfred Simmons, CPA, a senior accountant at PCQ, participated with five non-employees of PCQ in a scheme to present false claims for payment from the settlement fund, resulting in the misappropriation of more than $6 million from the fund.

Keywords: AICPA, Code of Ethics, Fraud, Misappropriation

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BACKGROUND

In 2012, the Court appointed PCQ as claims administrator for Right Field based on McGee's request. On November 3, 2014, the court approved the terms of the settlement, which established a settlement fund in the amount of $650 million. PCQ was responsible for reviewing submitted claims, identifying valid and invalid claims, and distributing settlement proceeds to valid claimants. Alfred Simmons, in his position with PCQ, was employed to assist in evaluating submitted claims. His duties included reviewing claim documents and addressing issues that arose with the claimants. He submitted or caused to be submitted false claims seeking payment from the settlement fund.

On May 13, 2016, McGee filed a motion for distribution of the settlement funds. PCQ provided an affidavit stating that it had examined the claims to determine that they were "properly completed, signed, and documented." The court granted the motion for distribution and ordered distribution in accordance with PCQ's examination and calculations. The distribution included payments of over $6 million based on false claims submitted by Simmons and his co-conspirators. At all times relevant to the claims, Simmons was employed by PCQ as a certified public accountant assisting in the evaluation of submitted claims. He was acting within the scope of his employment duties with PCQ.

By virtue of his position with PCQ, Simmons had access to the computer system that contained the records of each claim. Simmons was responsible for reviewing claim documents to determine whether the claimant was entitled to recovery. To successfully perpetuate the fraud scheme, the conspirators took elaborate steps to produce the necessary records to manufacture and support their fraudulent claims. In particular, they created fake corporations to act as claimants, using false names for executive personnel, with addresses in the United States and in foreign countries. They opened bank accounts and established virtual offices for the fake corporations with mailing addresses and telephone numbers. The virtual offices provided services to allow the defendants to retrieve the mail and receive telephone messages. The defendants then created fake brokerage account statements and other financial documents to show that their fake companies owned certain securities at the appropriate time that entitled them to share in the class action settlement funds.

The scheme was organized by John Black. Black had no relationship with PCQ. Black recruited the other conspirators and Simmons to assist him. Simmons acted as Black's eyes and ears inside the accounting firm to make sure that the fraud scheme was successful and that no one discovered the fraud. Simmons used his inside knowledge to advise the outside conspirators regarding impending deadlines. He also provided confidential documents to assist in the preparation of false claims. He reviewed the false claims once submitted and gave advice regarding amendments or corrections. Simmons approved the fraudulent claims or took steps to ensure that other PCQ employees approved them. Simmons advised Black about the timing to submit their fraudulent claims and how to prepare the claim forms and supporting documentation to ensure and maximize their recovery. In exchange, Black paid Simmons approximately 10% of the fraud proceeds. Black also bought Simmons a Mercedes S class sedan and paid $385,000 to the IRS on Simmons's behalf to cover Simmons's tax liability arising from a portion of the fraud scheme.

Simmons allegedly told Black that the involvement of an attorney would help create the appearance of legitimacy for the fake claims that they were submitting. In early 2014, Black began working with Alice Hohn, a corrupt attorney, who then began to "represent" the fake companies and file fraudulent claims on their behalf. She collected the proceeds of the scheme and distributed them as Black directed. As a result of one fraudulent claim, for example, Hohn received a check for over $8 million, representing the fake company's share of the settlement proceeds. Hohn then deposited the fraud proceeds in her law firm trust account from which she wired a portion of the proceeds to two separate bank accounts that were under Black's control. For this fraudulent claim and the minimal work performed, Black paid Hohn and her law firm approximately $150,000.

The conspirators engaged in an organized and long-term effort to steal money from victims within the settlement classes who were dependent on that money to restore the losses that they had suffered. They went to great lengths to make their fake companies look legitimate. For example, one of the conspirators traveled to Singapore as the vice president of one of the fake companies to obtain and mail documents and other information that would help make the fake company and its records appear legitimate.

Simmons was charged with money laundering and with filing false federal tax returns that under reported his income and claimed deductions from income that he stated was generated from a legitimate business but was merely the income produced in this fraud scheme.

Ultimately, Simmons entered a plea agreement. He pled guilty to all counts and agreed to 72 months in prison. He also agreed to pay restitution.

REQUIREMENTS:

Disregard the legal and civil implications of this case. Assume that PCQ followed their normal hiring practices and Simmons had successfully participated in all required firm training.

1. Please discuss how the AICPA Code of Professional Conduct applies to PCQ. Specifically, which sections of the AICPA Code of Professional Conduct apply to PCQ in this situation?
2. Did the partners at PCQ follow the AICPA Code of Professional Conduct? Support your answer.
3. What is PCQ's responsibility after the fraud has been committed and discovered? Support your answer.

TEACHING NOTES[i]

Summary

Alfred Simmons, a CPA, employed by PCQ, LLP, helped perpetrate a fraud using information gained and controlled while performing his duties related to a PCQ engagement. Simmons entered a plea agreement where he pled guilty to the fraud.

Target Audience

Instructors could use this case in an Auditing or Ethics class.

Teaching Objectives

The student should be able to:

- Identify ethical issues related to hiring, training and supervising staff members in non-attest function roles.
- Apply critical thinking skills to the issues identified.
- Reach a logical conclusion regarding PCQ's compliance with the AICPA Professional Code of Conduct based on their analysis.
- Present the issues, analysis, and conclusion in written or oral form.

The overriding objective of this case is for students to identify and analyze the facts presented in the case thoughtfully. Students can be reasonably expected to reach different conclusions about PCQ's ethical responsibility as long the conclusion reached is supported.

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[i] Much of the background information for this case was taken from the following source: *Oetting v. Heffler, Radetich & Saitta, LLP, No. 4:11-CV-253 CEJ, 2011 WL 3055235, (E.D. Mo. July 25, 2011).* The names and some of the facts were changed for educational purposes, unknown facts were created.

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