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White Collar Update: The Supreme Court Weighs In On Bank Fraud

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With Monday's decision in *Shaw v. U.S.,* the Supreme Court cleared up any ambiguity regarding who is protected by the bank fraud statute (18 U.S.C. §1344) and, along the way, continued to encourage federal prosecutors to rely on the powerful and far-reaching bank fraud statute. In saying that fraud against a customer is fraud against a bank, the decision continues the Court's strong support of the statute and intolerance for technical, loophole-seeking defenses.

The Court's 8-0 decision came after review of a 9th Circuit case in which the defendant was convicted of scheming to defraud a Taiwanese businessman of over $300,000 by looting the victim's Bank of America account. Because he intended to target the victim, and not the bank, Shaw argued that federal prosecutors were wrong to bring charges under the prong of the 1984 Bank Fraud Act that requires proof of intent to defraud a bank. Shaw further suggested that the statute required prosecutors to show he intended to harm the bank's property.

The two clauses of the federal bank fraud statute have been somewhat at odds for several years, leading the Court to weigh in and clarify the statute in more than one recent opinion. The first clause prohibits any scheme "to defraud a financial institution;" the second addresses a scheme "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." The Court rejected Shaw's first argument, holding that – like the mail fraud statute – intent to cause a financial loss is not required.

The Court further found that the bank had a property interest in the depositor's money because the bank serves a trustee of its customers' funds. Writing for the Court, Justice Breyer said that "Hence, for 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."

The decision gives federal prosecutors greater support for using the bank fraud statute and the substantial penalties that come with it: a 30 year maximum (versus 20 for mail and wire fraud), and a 10 year statute of limitations. And it stays true to the Court's expansive reading of the statute, particularly 2014's *Loughrin v. U.S.* decision in which the Court found that the bank fraud statute reaches even pedestrian conduct because the statute only requires an intent that a bank "part with money."

The White Collar & Government Investigations Group has broad experience with this and other fraud-based statutes and is available to answer questions or discuss further.

This post was drafted by Patrick McInerney, a partner in the Spencer Fane LLP Kansas City, MO office. For more information, visit spencerfane.com.

AUTHORS

- Patrick McInerney

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