

PAID ADVERTORIAL

The Right Way to Deal with Workplace Fraud

Recently, I decided to repair a small corner of dry rot on our porch. I grabbed a hammer, paint scraper and chisel. By the end of the day, the roof and floor boards were off, and I made a trip to Home Depot for a truckload of wood and roofing.

This is not much different than workplace fraud. Detection usually occurs via a missing bank deposit, unrecognized vendor, computer glitch or call from a customer you didn't know existed ... who apparently pays in cash. Maybe there was a distribution that didn't square with your partner's ownership percentage, or the financial statements were late. Fraud is often detected the same way I discovered my porch had rotted—chipping away and finding a bigger problem. You could start peeling the layers of the porch roof like I did. But if you don't know where to stand, you might hurt yourself. So what to do?

A do-it-yourself investigation runs the risk of spoiling evidence, tipping off the thief or creating other collateral damage. If there is a risk of violence or public harm, then law enforcement should be engaged.

We often recommend that suspected fraud deserves an internal, confidential investigation to identify the harm and its scope, responsible parties, trusted allies, suspect(s), accomplices and remedies.

The number of fraud types is limited. All involve opportunity and motive. Fraud occurs in an environment that lacks internal controls and oversight regarding cash, checks, credit cards, mail, banking, inventory, vendors, trade secrets and confidential information, client data, bidding, and new business opportunities.

A strategic investigation can identify and mitigate immediate harm and reduce the cost and time required later, during litigation or prosecution. This approach also allows you to legally obtain unfiltered evidence to evaluate a case before going to court.

Keep in mind that a dishonest principal, employee or competitor is ... dishonest. By the time a lawyer files suit, and serves discovery and deposition notices, the money is spent, trade secrets disclosed and incriminating emails deleted.

Assuming privacy laws governing your business allow for it, a computer forensic consultant can secure electronic evidence for early review. Consider pulling email from your company server. What's in the suspect's Internet history? What's recently deleted? What business information was sent to a personal email address? Should sworn statements be taken to obtain unrehearsed recollections?

Pre-litigation investigation can help determine if a lawsuit would be worth it—are there assets and where? If financial accounts are discovered, a certified fraud examiner can identify patterns and quantify damages. You just need to ensure that access is obtained legally.

Background checks can be helpful and surveillance may also be in order—be it tracking

your once-trusted VP to a competitor's parking lot or a pinhole camera above the pilfering payroll clerk's desk. If there's a threat of violence, surveillance of the suspect may be more economical than security for everyone else.

Then, if civil litigation is appropriate, you can avail yourselves of one of the few business-friendly forums in New York—the Commercial Part of the NYS Supreme Court—designed to address business disputes in a manner that can be more attuned to business concerns than other tribunals.

Beyond traditional litigation, fraud cases often need injunctive relief—a court order that restrains, or compels, action.

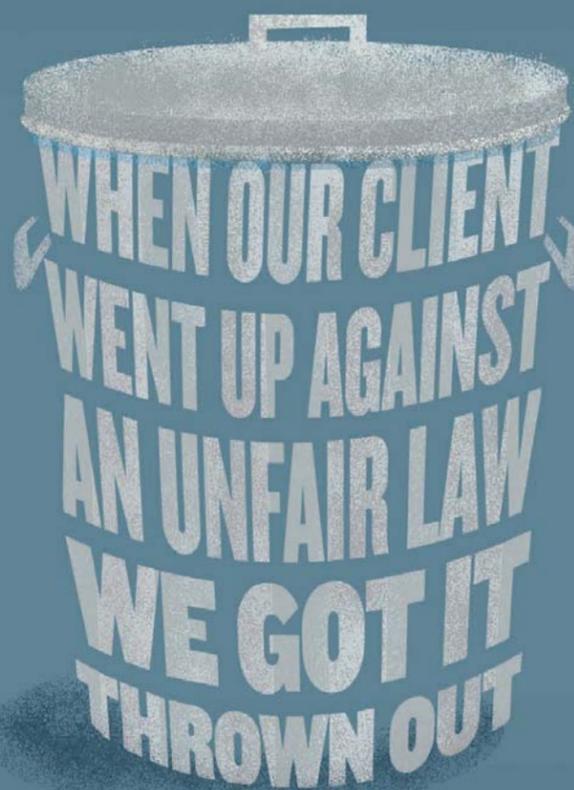
Restraints on converted assets prevent their dissipation. A court might compel the production of electronic devices or seizure of property. The idea is to mitigate the harm, protect the business, and prompt restitution and disgorgement of ill-gotten gains.

If the case is developed in the proper manner, and presented effectively, your business can move forward with a greater appreciation for proper internal controls and procedures.

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