

Client Alert

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The UK's Serious Fraud Office Secures its First Series of Convictions Under the Bribery Act 2010

By Kevin Roberts and Keily Blair

The Serious Fraud Office (SFO) secured its first convictions under the Bribery Act 2010 (the "Bribery Act") on 5 December 2014 at Southwark Crown Court following an investigation into the sale and promotion of investment products offered by Sustainable AgroEnergy plc (SAE), a subsidiary of Sustainable Growth Group (SGG).¹ The proceeds of the fraud amounted to £23 million.

THE CASE

On 14 August 2013, the SFO charged Mr Gary West, Mr James Whale, Mr Stuart Stone and a fourth individual, Mr Fung Fong Wong, with criminal offences including:

1. Conspiracy to commit fraud by false representation and conspiracy to furnish false information in response to an investigation by the SFO under section 1 of the Criminal Law Act 1977 (Mr West, Mr Whale and Mr Stone);
2. Fraudulent trading contrary to section 933 of the Companies Act 2006 (Mr West and Mr Whale); and
3. Making and accepting a financial advantage contrary to sections 1 (1) and 2 (1) of the Bribery Act (Mr West, Mr Stone and Mr Wong).

Another SAE/SGG employee involved was not prosecuted by the SFO as, despite the SFO's attempts to have him extradited back to the UK, he is being prosecuted in Cambodia.

The charges and the ultimate convictions came about due to an SFO investigation into the selling and promotion of SAE investment products based on "green biofuel" manufactured from Jatropha tree plantations in Cambodia. SAE claimed to own land in Cambodia which had been planted with Jatropha trees, and further claimed that there was an insurance policy in place to protect investors should the crops fail. These claims were untrue and the money invested by new investors was used to provide a return to earlier investors in the form of a Ponzi scheme. By mid-2011, SAE was insolvent and yet it continued to trade and sell investment products into 2012.

The SFO's investigation also uncovered serious accounting irregularities within SGG. Mr West and Mr Stone, in addition to making false representations to investors, conspired to produce false sales invoices of over £3 million, which allowed Mr Stone to obtain commission rates of 65% on investor's funds. These transactions were disguised using false email addresses, Swiss bank accounts and overseas companies registered in the Seychelles and British Virgin Islands. Mr West received bribes from Mr Stone in connection with his role in the false invoices submitted by Mr Stone.

The SFO's investigation concerned acts which occurred between April 2011 and February 2012. The SFO could therefore bring a prosecution under the Bribery Act, as the relevant acts took place after July 2011, when the Bribery Act came into force.

¹ <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-sentenced-to-28-years-in-total-for-23m-green-biofuel-fraud.aspx>.

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On 5 November 2014 a jury found that Mr West, Mr Whale and Mr Stone were guilty of offences under the Criminal Law Act 1977 and the Companies Act 2006, and that Mr West and Mr Stone were guilty of offences under the Bribery Act. Mr Wong was found not guilty of accepting bribes under section 2 of the Bribery Act, as the jury determined that he did not know the payment he had received was intended as a bribe.

On 8 December 2014, the judge handed down the following sentences:

- Gary West: 13 years' imprisonment for conspiracy to commit fraud by false representation, fraudulent trading, conspiracy to furnish false information and two counts of bribery contrary to section 2 of the Bribery Act (the offence of requesting or accepting a bribe as an improper inducement). West was sentenced to four years' imprisonment for each offence under the Bribery Act, to be served concurrently;
- James Whale: nine years' imprisonment for conspiracy to commit fraud by false representation and fraudulent trading; and
- Stuart Stone: six years' imprisonment for conspiracy to furnish false information and two counts of bribery contrary to sections 1 (1) and (2) of the Bribery Act (the offence of bribing another person). Stone was sentenced to six years' imprisonment for each offence under the Bribery Act, to be served concurrently.

Mr Justice Beddoe described the fraud as a “thickening quagmire of dishonesty . . . there were more than 250 victims of relatively modest means, some of whom had lost all of their life savings and their homes”, and added that the bribery was an aggravating feature of the offences.

Mr West and Mr Whale were both disqualified from acting as company directors for 15 years, and Mr Stone was disqualified from acting as a company director for a period of 10 years.

TAKEAWAYS

The speed in which the matters were brought to trial—charges were brought in this case within 18 months of the offences and convictions were secured just over a year later—adds credibility to the SFO's claim that it will take swift action against perpetrators of financial and economic crime where practicable. The next test for the SFO under the Bribery Act will be whether it can deliver a successful prosecution in relation to corporate criminal liability under the Bribery Act.

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