District Judge Orders Much-Reduced Sentence in Fraud Case

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A federal judge has made a major reversal in the case of Steve Warshak, the Berkeley Premium Nutraceuticals founder who was sentenced to 25 years for defrauding customers who bought his "male enhancement" pills, which were advertised in the notorious "Smiling Bob" ad campaign. We have discussed Warshak's case in a previous blog post. Warshak had been accused of defrauding customers out of $400 million, and had been handed the lengthy sentence after being found guilty of fraud, money laundering, and conspiracy. Prosecutors said that the fraud included false advertising, lying to banks, and making unauthorized charges on consumer credit cards.

In December 2010, the U.S. Court of Appeals for the 6th Circuit ordered a new sentencing, stating that the lower court must more thoroughly examine the amount of money lost because of Warshak's crimes. Indeed, while federal prosecutors accused Warshak's company of bilking customers out of $100 million through deceptive ads, unauthorized credit transactions, and refusal to cancel orders or accept returns, Judge Spiegel originally ordered Warshak and his co-defendants to forfeit $411 million— a figure apparently based on the company's net sales.

The 6th Circuit said, "The district court did little to explain how it arrived at $411 million as the amount of loss, other than to suggest that the figure represented Berkeley's net sales . . . [T]he district court should have engaged in a more thorough explication of its calculation, and it also should have explicitly referenced the evidence upon which it relied."

Now, three years later, in response to the Court of Appeals' instructions, Judge S. Arthur Spiegel has slashed Warshak's sentence by 15 years. In handing Warshak the new 10 year sentence — with credit for time served and good behavior — Judge Spiegel considered several factors that the Court of Appeals suggested warranted a shorter sentence.

First, the amount of money lost by consumers might have been vastly overstated in Warshak's original sentencing. While the revised estimate is still a huge sum at $100 million, it is only a quarter of the previous estimate. Additionally, the significant disparity between Warshak's 25 year sentence and those of his co-defendants — who were all sentenced to two years or less —supported a shorter sentence.

In white-collar cases, the severity of a defendant's sentence is closely tied to the amount of loss caused by the crime, and therefore any exaggeration or miscalculation of that amount has serious implications. We applaud the 6th Circuit for refusing to allow an exaggerated loss calculation to go undisturbed.

Crime in the Suites is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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